



**ALACHUA COUNTY  
CONSTRUCTION MANAGEMENT (CM) AT RISK CONTRACT WITH A  
GUARANTEED MAXIMUM PRICE FOR BID NO. 22-303**

**PROJECT NO.  
AGREEMENT NO. 13356**

**TABLE OF CONTENTS**

Section 1.	Contract Documents.....	4
Section 2.	Scope of Work .....	5
Section 3.	Relationship of Parties .....	6
Section 4.	Contract Amount .....	7
Section 5.	Cost of the Work .....	8
Section 6.	Alachua County Minimum Wage .....	13
Section 7.	Bonds .....	13
Section 8.	Contract Time and Liquidated Damages .....	14
Section 9.	Exhibits Incorporated.....	16
Section 10.	Notices. ....	16
Section 11.	Modification .....	17
Section 12.	Successors, Assigns and Third Party Beneficiaries .....	17
Section 13.	Governing Law .....	17
Section 14.	No Waiver .....	18
Section 15.	Entire Contract .....	18
Section 16.	Severability .....	18
Section 17.	Construction .....	18
Section 18.	Counterparts .....	19
Section 19.	Electronic Signatures .....	19
Section 20.	E-Verify .....	20
Section 21.	County COVID Procedures .....	20
EXHIBIT A GENERAL TERMS AND CONDITIONS .....		22
1.	INTENT OF CONTRACT DOCUMENTS .....	23
2.	INVESTIGATION AND UTILITIES .....	23
3.	SCHEDULE .....	23
4.	PROGRESS PAYMENTS .....	24
5.	PAYMENTS WITHHELD .....	25
6.	FINAL PAYMENT .....	26
7.	SUBMITTALS AND SUBSTITUTIONS.....	27
8.	PRE-CONSTRUCTION PHASE SERVICES .....	28
9.	CONSTRUCTION PHASE SERVICES .....	30
10.	DAILY REPORTS, RECORD CONTRACT DOCUMENTS AND MEETINGS.....	36
11.	CONTRACT TIME AND TIME EXTENSIONS .....	37
12.	CHANGES IN THE WORK.....	38
13.	CLAIMS AND DISPUTES.....	40
14.	OTHER WORK.....	41
15.	INSURANCE.....	42
16.	WAIVER OF SUBROGATION.....	44
17.	INDEMNIFICATION.....	44
18.	CLEANUP AND PROTECTIONS .....	45
19.	ASSIGNMENT.....	46
20.	PERMITS, LICENSES AND TAXES .....	46
21.	TERMINATION FOR DEFAULT .....	47
22.	TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION .....	48

23.	COMPLETION.....	49
24.	WARRANTY.....	50
25.	TESTS AND INSPECTIONS.....	51
26.	DEFECTIVE WORK.....	52
27.	SUPERVISION AND CONSTRUCTION MANAGER’S REPRESENTATIVE.....	53
28.	ACCESS AND PROTECTION OF WORK.....	54
29.	EMERGENCIES.....	55
30.	USE OF PREMISES.....	56
31.	SAFETY.....	56
32.	PROJECT MEETINGS.....	58
33.	MATERIAL SAFETY DATA SHEET.....	58
34.	AUDITING RIGHTS AND INFORMATION.....	58
35.	PROJECT RECORDS.....	59
36.	COMPLIANCE WITH LAWS.....	61
37.	SUBCONTRACTS.....	61
38.	MARKET ANALYSIS AND SOLICITATION OF BIDS.....	63
39.	PARTNERING.....	65
40.	SECURING AGREEMENT.....	65
41.	PUBLIC ENTITY CRIMES.....	65
42.	EQUAL EMPLOYMENT OPPORTUNITY/NON-DISCRIMINATION/SBE.....	66
43.	CHANGED CONDITIONS.....	66
44.	OWNERSHIP RIGHTS.....	67
	EXHIBIT B SUPPLEMENTAL TERMS AND CONDITIONS.....	69
	EXHIBIT C FORM OF PAYMENT BOND.....	76
	EXHIBIT D FORM OF PERFORMANCE BOND.....	78
	EXHIBIT E INSURANCE REQUIREMENTS.....	81
	EXHIBIT F BOND WAIVERS AND PAYMENT APPLICATION AFFIDAVIT.....	84
	EXHIBIT G FORM OF CONSTRUCTION MANAGER APPLICATION FOR PAYMENT.....	88
	EXHIBIT H CONSTRUCTION MANAGER CHANGE ORDER.....	90
	EXHIBIT I MASTER PROJECT SCHEDULE MILESTONES.....	92
	EXHIBIT J: CONSTRUCTION MANAGER’S STAFFING SCHEDULE.....	93
	EXHIBIT K1 GMP AMENDMENT TO CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR LOCATION 1.....	94
	EXHIBIT K2 GMP AMENDMENT TO CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR LOCATION 2.....	106
	EXHIBIT K3 GMP AMENDMENT TO CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR LOCATION 3.....	118
	EXHIBIT 41 GMP AMENDMENT TO CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR LOCATION 4.....	130
	EXHIBIT L TRUTH-IN-NEGOTIATION CERTIFICATE.....	142
	EXHIBIT M ALACHUA COUNTY MINIMUM WAGE CERTIFICATION.....	143
	EXHIBIT N CONTINGENCY FUND DISBURSEMENT REQUEST.....	144
	EXHIBIT O CONTINGENCY FUND DISBURSEMENT LOG.....	146

**CONSTRUCTION MANAGEMENT (CM) AT-RISK AGREEMENT NO. 13356  
BETWEEN ALACHUA COUNTY AND D E SCORPIO CORPORATION FOR BID NO.  
22-303**

**THIS AGREEMENT** made and entered into between Alachua County, Florida, a political subdivision and Charter County of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "Owner" or "County," and D E Scorpio Corporation, a Florida for Profit Corporation, with a principle business address located at 3911 West Newberry Road Gainesville, FL 32607 hereinafter referred to as "Contractor". Collectively hereinafter County and Contractor are referred to as "Parties". This Agreement requires the Construction Manager to perform all work ("Work"), as more particularly described below, in connection with the development, design, procurement, management and construction of County Fire and Emergency Medical Stations ("Project"), said construction being set forth in the plans and specifications being prepared by The Lunz Group Inc, the Architect and/or Engineer of Record ("Design Professional"), and all other Contract Documents hereafter specified.

**WITNESSETH:**

**WHEREAS**, the County issued Request for Proposal (RFP) 22-303 seeking proposals from qualified firms to provide construction management services for the pre-construction and construction phases services with a guarantees maximum price for the construction of one or more fire stations; and

**WHEREAS**, after evaluating and considering all timely responses to RFP No. 22-303 the County identified the Construction Manager as the top ranked firm; and

**WHEREAS**, the County desires to contract with the Construction Manager to provide the services described in RFP No. 22-303 and the Construction Manager desires to provide such services to the County in accordance with the terms and conditions set forth herein; and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

**1. Contract Documents**

- 1.1. The Contract Documents consist of this Contract, the Exhibits described in Section 9 hereof, and any duly executed and issued addenda, Change Orders, Field Orders and Amendments relating thereto. Further, the term Contract Documents shall include all plans and specifications for the construction of the Project ("Construction Documents") being prepared by Design Professional, but only after said Construction Documents have been completed by Design Professional and approved in writing by Owner. All of the foregoing Contract Documents are sometimes referred to herein as the "Contract."
- 1.2. Owner shall furnish Construction Manager with one (1) sealed copy and one (1) electronic set of the Construction Documents for each of the locations listed in section 2.1.1. upon

completion. Any additional copies of Construction Documents, required by Construction Manager for execution of the Work, shall be made by Construction Manager from its electronic set at Construction Manager's sole cost and expense. The electronic set of the Construction Documents shall be returned to Owner upon final acceptance of the Work or termination of the Contract, whichever occurs first. Provided, however, Owner is furnishing Construction Manager an electronic set of Construction Documents for Construction Manager's convenience and such furnishing by Owner shall not be deemed to be a waiver by Owner or Design Professional of any copyright, patent or license they may have with respect to the Construction Documents. All such copyrights, patents and licenses hereby being expressly reserved by Owner and Design Professional.

## **2. Scope of Work**

### **2.1. Description of Project.**

2.1.1. Construction of County Fire and Emergency Medical Services Stations within three miles of the locations described below. The project will also include necessary design, construction work (such as roadway turn lanes), and all site work required by State or local review agencies.

- 10404 SW 24th Avenue, Gainesville, FL (Location #1)
- 12825 NW US Highway 441, Alachua, FL (Location #2)
- I-75 at NW US Highway 441, Alachua, FL (Location #3)
- Hawthorne Rd (SR 20) at CR 234, Rochelle Community, Unincorporated Alachua County (Location #4)

2.1.2. The Work to be provided by Construction Manager pursuant to this Contract shall be performed essentially in two phases for each location: those phases being Pre-Construction Phase Services and Construction Phase Services. At the discretion of Owner, those two phases may overlap. Additionally, the Construction Phase may be separated into sub-phases.

2.2. **Pre-Construction Phase Services.** Construction Manager shall review and comment upon the Construction Documents being developed by Design Professional, ultimately developing a separate Guaranteed Maximum Price (GMP) proposal for each location listed above in section 2.1.1. The scope of that review shall include, but not be limited to, reviewing those various documents for value engineering and constructability. As the Construction Documents are developed by Design Professional through the various design phases set forth in the Design Professional Services Contract between Design Professional and Owner ("Design Agreement"), Construction Manager shall provide Owner with detailed, itemized construction cost estimates upon receipt of each design deliverable with respect to those documents. In an event that during the project design phase, it exceeds the budget; the Construction Manager will assist in providing a detailed reason and a resolution to bring the project back within budget. Construction Manager agrees to attend any and all design and preconstruction conferences and to otherwise assist and cooperate

with Design Professional with respect to the design of the Project. Construction Manager shall provide all other services during the Pre-Construction Phase of the Project as set forth in the Contract Documents.

- 2.3. **Construction Phase Services.** After the Construction Documents have been sufficiently completed by Design Professional and approved by Owner for all of the Work (or such portions thereof as may be designated by Owner in writing), and Owner and Construction Manager have agreed in writing upon the guaranteed maximum price to be paid Construction Manager and the Contract Time for the Work (or designated portions thereof) as hereafter provided, Construction Manager shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the terms and conditions of the Contract Documents.

### 3. Relationship of Parties

- 3.1. Construction Manager accepts the relationship of trust and confidence established by this Contract. Construction Manager covenants with Owner to collaborate with Design Professional; to utilize Construction Manager's best skill, efforts and judgment in furthering the interest of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and the most expeditious and economical manner, consistent with the interests of Owner. Further, Construction Manager acknowledges that: (1) it has represented to Owner that it has specific expertise in the planning, management and construction of projects of similar size, cost and complexity and (2) that such representation is a material inducement to Owner to enter into this Contract.
- 3.2. Wherever the terms of this Contract refer to some action, consent or approval (excluding approvals of Change Orders, or Amendments to the Contract) 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. Owner's representative is identified in Section 10.
- 3.3. Construction Manager hereby designates Ryan Stroh as its Project Manager with full authority to bind and obligate Construction Manager on all matters arising out of or relating to the Work or the Contract Documents. Construction Manager agrees that the Project Manger shall devote whatever time is required to satisfactorily manage the Work and further agrees that the Project Manager shall not be removed or replaced by Construction Manager without Owner's prior approval, which approval shall not be unreasonably withheld.

3.4. Construction Manager shall serve, if requested, as a temporary member of the County’s Art in Public Places Trust to carry out the purposes of Chapter 29, Art in Public Places, Alachua County Code of Ordinances.

**4. Contract Amount**

4.1. In consideration of the full and faithful performance by Construction Manager of the covenants in this Contract, Owner agrees to pay, or cause to be paid, to Construction Manager the following amounts (herein “Contract Amount”), in accordance with the terms of this Contract.

**4.2. Pre-Construction Phase Services**

4.2.1 For the Pre-Construction Phase Services for the Location #1 (10404 SW 24th Avenue, Gainesville, FL), including, but not limited to, providing value engineering services, reviewing Construction Documents for constructability, assisting and meeting with Design Professional during the various design phases, development of the construction schedule, preparing cost estimates, performing market analysis and soliciting bids, and development and submission of the GMP Amendment, Construction Manager shall be paid an amount of Forty Thousand Dollars (\$40,000.00), in the following manner:

Concept review with the Architect	\$N/A
30% Architectural Design	<u>\$13,000.00</u>
75% Architectural Design	<u>\$N/A</u>
100% plan submittal for the development review process:	<u>\$17,000.00</u>
50% Construction documents:	<u>\$N/A</u>
100% Construction docs and GMP:	\$
Design To Budget	\$10,000.00

4.2.2 For the Locations 2, 3 and 4, the Construction Manager shall be paid a lump sum of Ten Thousand Dollars (\$10,000.00) for Pre-Construction Phase Services for each of those locations. The Pre-Construction Phase Services for each location shall include updated estimates based on each site and conclude with a GMP for each location.

4.3. **Construction Phase.** With respect to the Construction Phase Services to be provided by Construction Manager hereunder, Owner shall reimburse Construction Manager for the Cost of the Work (as that term is defined hereafter and in Exhibit K1, K2, K3, K4), and pay Construction Manager a Construction Management Fee agreed upon for each Location. The Guaranteed Maximum Price will be produced from 100% design documents as such amount hereafter may be adjusted pursuant to the express terms herein for Change Orders and Construction Change Directives. This sum is based in part on the Project Scope of Work as outlined in Section 2. The Construction Management Fee shall be Construction Manager’s total compensation for all overhead not reimbursable as Cost

of the Work under Section 5.1 below, as well as Construction Manager's total profit for Construction Phase Services. No other fees, overhead or profit shall be allowed unless noted otherwise in other areas of this Agreement. 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 guaranteed maximum price proposal, shall be open to Owner for review and copying. Owner will be notified of times and dates of any bid opening by the Contractor and allowed to attend and observe the opening and any subsequent calculations of cost. Employee's personal information is excluded, if exempt under Ch. 119, F.S. The final guaranteed maximum price shall be mutually agreed upon by Owner and Construction Manager and shall be set forth in the GMP Amendment ("GMP"). The form for GMP Amendment is attached hereto as Exhibit K. Construction Manager shall provide a detailed breakdown acceptable to Owner of its guaranteed maximum price proposal. This is not a line item GMP, but for each line item in the GMP, Construction Manager shall develop and maintain a written report which identifies and explains all variances and deviations from the bid amount originally submitted for that line item, to the final line item price incorporated into the GMP. All variances and deviations will be approved by the County's Project Manager. The Construction Manager guarantees that in no event shall the Construction Management Fee and the total Cost of the Work exceed the GMP, as the GMP may be adjusted pursuant to the terms herein for Change Orders and Construction Change Directives. In the event Construction Manager and Owner fail to reach an agreement on the GMP, Owner may elect to terminate this Contract. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned through the date of termination to the extent such services were expressly approved in advance and in writing by Owner; but Construction Manager shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed.

## 5. Cost of the Work

5.1. **Costs to be Reimbursed.** The term Cost of the Work shall mean all costs necessarily and reasonably incurred by Construction Manager in the proper performance of the Construction Phase Services portion of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner only after Construction Manager has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. At the Owner's option, the cost for general conditions and/or general requirements may be negotiated as a lump sum prior to or at GMP. The Cost of the Work shall include only those items set forth below in this subsection:

### 5.1.1 Labor Costs.

5.1.1.1. Wages, other than bonuses, of construction workers directly employed by



Construction Manager to perform the construction of the Work at the Project site or, with Owner's written agreement, at off-site workshops. Costs to be reimbursed will be the actual wages paid to the individuals performing the Work, and only for the time spent performing Work for the Project.

5.1.1.2. Wages or salaries, other than bonuses, of Construction Manager's supervisory and administrative personnel who are stationed at the Project site with Owner's written agreement, and as listed in the form of GMP Amendment, and who are performing Work on said Project. Costs to be reimbursed will be the actual wages other than bonuses paid to the individuals performing the Work and only for the time spent performing Work for the Project.

5.1.1.3. Wages and salaries, other than bonuses, of Construction Manager's supervisory and administrative personnel engaged at factories, offices, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with Owner's written agreement as provided in subsection 5.1.1.2 above.

5.1.1.4. The Parties hereby establish the fixed markup rate of Forty Percent (40%) for all labor burden, for all labor burden, including all taxes, insurance, contributions, assessments and benefits required by law and collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as, medical and health benefits, and pensions, provided such markup is to apply only upon those wages and salaries included in the Cost of the Work under subsections 5.1.1.1 through 5.1.1.3 above.

5.1.2 **Subcontract Costs.** Payments made by Construction Manager to subcontractors in accordance with the requirements of the applicable written subcontracts.

5.1.3 **Cost of Materials and Equipment Incorporated into the Completed Construction.**

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

5.1.3.2. Costs of materials described in subsection 5.1.3.3 above, in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to Owner at the completion of the Work or, at 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, or if the Work related to the materials in question is complete and billed for, the Construction Manager shall issue reimbursement payment to the Owner for the amounts.

5.1.4 Costs of other materials and equipment, temporary facilities and related items.

- 5.1.4.1. 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.
- 5.1.4.2. 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.
- 5.1.4.3. Cost of removal and proper disposal of debris from the Project site.
- 5.1.4.4. 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, only for these items that are used in the performance of the Project.
- 5.1.4.5. The cost of the items listed in this subsection 5.1.4 with the exception of items listed in subsection 5.1.4.4 that pertain to machinery, equipment, and hand tools used by the construction workers may be negotiated as a fixed amount if both Parties agree, and shall be reflected in the Form of Work Authorization.
- 5.1.4.6. That portion of the reasonable travel and subsistence expenses of Construction Manager's personnel, assigned to the Project site, incurred while traveling outside of the Alachua County area in discharge of duties connected with the Work, provided all of such expenses and charges shall be subject to the prior written approval of Owner, and excluding travel to and from employees' residence.

5.1.5. **Miscellaneous Costs.**

- 5.1.5.1. That portion of any separate premiums for (i) bonds directly attributable to this Contract, (ii) any additional insurance coverage which is purchased by Construction Manager, with Owner's prior written approval, beyond the level of coverage specified herein and (iii) if Construction Manager is using self-insurance allocation supporting documentation must be provided to the Owner supporting the amount allocated to the Project.

5.1.5.2. The CM may opt to require performance bonds from any subcontractor. The cost of the bonds shall only be included in the Cost of Work for those subcontracts in excess of Forty Thousand Dollars (\$40,000.00). Any other subcontractor bonds shall not be considered a Cost of Work, hence shall not be reimbursable by the Owner to the CM.

5.1.5.3. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager has paid.

5.1.5.4. 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.

5.1.5.5. 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.

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

5.1.5.7. Deposits lost for causes other than Construction Manager's fault or negligence.

5.1.5.8. Legal, mediation and arbitration costs, other than those arising from disputes between Owner and Construction Manager, that are reasonably incurred by Construction Manager in performance of the Work and that receive Owner's prior written consent, said consent to be given or denied in Owner's sole discretion.

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

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

5.2.1. Salaries and other compensation of Construction Manager's personnel stationed at Construction Manager's principal office or offices other than the Project site office, unless otherwise approved in writing by Owner's representative.

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

5.2.3. Overhead and general expenses, except as may be expressly included in subsection 5.1 above.

5.2.4. Construction Manager's capital expenses, including interest on Construction

Manager's capital employed for the Work.

- 5.2.5. Rental costs of machinery and equipment, except as specifically provided in subsection 5.1.4.2 above.
- 5.2.6. Costs due to the fault or negligence of Construction Manager, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
- 5.2.7. Any costs not specifically and expressly described in subsection A above.
- 5.2.8. Costs which would cause the GMP to be exceeded, except as to Change Orders and Construction Change Directives approved by the Owner in accordance with this Contract).
- 5.2.9. Costs for services incurred during the preconstruction phase.
- 5.2.10. Payments to Construction Manager's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, Holiday pay, sick pay, vacation pay, etc.), including salary increases not identified in the Construction Manager's bid proposal.
- 5.2.11. Technology, Data Processing, Project specific web sites, or Project Management system cost incurred by the Construction Manager in preparing the Project Schedule, Payroll, Accounting, Project cost reports or Project status reports and any other reports necessary to the progress of the Work.
- 5.2.12. Recruitment or training costs of personnel, recruiting or sign up bonuses.
- 5.2.13. Overtime expense of any salaried personnel, unless with the prior written approval of the County.
- 5.2.14. Any expenses for General Conditions cost which cause the total of General Conditions costs to exceed that set forth in the GMP.
- 5.2.15. Warranty costs.
- 5.2.16. Cost of Insurance coverages not specifically required by the contract.

**5.3. Discounts, Rebates, Refunds, and Buyout Savings.**

- 5.3.1. Cash discounts obtained on payments made by Construction Manager shall accrue to Owner if: (1) before making the payment, Construction Manager included them in

an application for payment and received payment therefor from Owner, or (2) 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.

5.3.2. Amounts which accrued to Owner in accordance with the provisions of subsection 5.3.1 above shall be credited to Owner as a deduction from the Cost of the Work.

**6. Alachua County Minimum Wage**

- 6.1. The Work performed through this Agreement is considered covered services under Chapter 22, Article XII, of the Alachua County Code of Ordinances (“Wage Ordinance”), which establishes a government minimum wage for certain contractors/professionals and subcontractors providing selected services to Alachua County government. “Covered Employees,” as defined in the Wage Ordinance, are those employees directly involved in providing covered services pursuant to this Agreement.
- 6.2. The Contractor/Professional shall provide certification, the form of which is attached hereto as **Exhibit M**, to the County that it pays each of its employees the Alachua County Government Minimum Wage, as may be amended by the County on or before October 1st of each year, as well as ensuring that it will require the same of its subcontractors throughout the duration of this Agreement.
- 6.3. The Contractor/Professional shall prominently display a copy of the Wage Ordinance where it is easily seen by covered employees and supply to covered employees upon request. Additionally, the Contractor/Professional is responsible to make any person submitting a bid for a subcontract for covered services aware of the requirements.
- 6.4. Failure to comply with the provisions of the Wage Ordinance will be deemed a breach of contract and authorize the County to withhold payment of funds in accordance with Chapter 218, Florida Statutes.
- 6.5. The Contractor/Professional will include the necessary provisions in subcontracts to ensure compliance. However, the County shall not be deemed a necessary, or indispensable, party in any litigation between the contractor/professional and subcontractor.

**7. Bonds.**

- 7.1. Within ten (10) business days after a GMP is agreed to by Owner and Construction Manager and PRIOR to furnishing any Construction Phase labor, services or material in connection with the improvements for a location, Construction Manager shall provide

Owner with Performance and Payment Bonds, in the form prescribed in Exhibits C and D, in the amount of 100% of the total sum of the GMP, the costs of which are to be paid by Construction Manager.

- 7.2. If the surety for any bond furnished by Construction Manager is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, Construction Manager shall, within twenty-one (21) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the minimum requirements noted above and Owner's approval.
- 7.3. In accordance with the requirements of Section 255.05(1) (a), Florida Statutes, Construction Manager shall record a copy of the Performance and Payment Bonds in the Public Records of Alachua County, Florida, within 5 days of furnishing the Performance and Payment Bonds to Owner. Construction Manager shall deliver a certified copy of the recorded Performance and Payment Bond to Owner as evidence of recording said Bonds, within 5 days of recording. The delivery of such evidence is a condition precedent to Owner's obligation to make any progress payments to Construction Manager hereunder.

**8. Contract Time and Liquidated Damages**

- 8.1. **TIME IS OF THE ESSENCE** in the performance of the Work under this Contract. The "Pre-Construction Commencement Date" shall be established in a Notice to Proceed to be issued by Owner for each location. Construction Manager shall commence the Pre-Construction Phase Services portion of the Work within five (5) calendar days after the Pre-Construction Phase Commencement Date. Any Work performed by Construction Manager prior to the Pre-Construction Phase Commencement Date shall be at the sole risk of Construction Manager. The "Construction Phase Commencement Date" shall be established in GMP Amendment. Construction Manager shall commence the Construction Phase Services portion of the Work within five (5) calendar days after the Construction Phase Commencement Date. No portion of the Work, with respect to the Construction Phase Services to be provided hereunder, shall be performed prior to the Construction Phase Commencement Date, unless expressly approved in advance by Owner in writing. The total period of time beginning with the Construction Phase Commencement Date and ending on the date of Substantial Completion of the Work is referred to hereafter as the "Contract Time". The Contract Time is set forth with more specificity in Paragraph 8.2 below.
- 8.2. Because the Work is to be completed in phases for each location, the timely completion of the first phase is critical to the timely completion of the second phase and, therefore, completion of the entire Project for a location. Accordingly, Construction Manager agrees to provide the Pre-Construction Phase Services in accordance with the design schedule established pursuant to the terms of the Design Agreement, after review and acknowledgement of Construction Manager. With respect to the Construction Phase Services, the GMP Amendment shall include the date that portion of the Work associated with the Construction Phase Services must be substantially completed by Construction Manager. That Substantial Completion date shall be established in terms of calendar days

after the Construction Phase Commencement Date. In the event Construction Manager and Owner fail to reach an agreement on the Contract Time and the Substantial Completion date, Owner may elect to terminate this Contract. In the event of any such termination, Construction Manager shall be entitled to receive that portion of the Contract Amount attributable to the Pre-Construction Phase Services earned to the date of termination plus that portion of any earned compensation associated with any Construction Phase Services provided, to the extent such services were expressly approved in advance and in writing by Owner; but Construction Manager shall not be entitled to any further or additional compensation from Owner, including but not limited to damages or lost profits on portions of the Work not performed. Substantial Completion of the Work shall be achieved when the Work has been completed to the point where Owner can occupy or utilize the Work for its intended purpose. Design Professional shall certify the date Substantial Completion of the Work is achieved. If Owner has designated portions of the Work to be turned over to Owner prior to Substantial Completion of the entire Work, Design Professional shall certify the date as to when Substantial Completion of such designated portions of the Work have been achieved.

- 8.3. Owner and Construction Manager recognize that, since time is of the essence for this Contract, Owner will suffer financial loss if the Work associated with the Construction Phase for a location is not substantially and finally completed within the time specified in the GMP Amendment, 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 in Alachua 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 and/or Final 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, \$1000.00 for each calendar day thereafter until Substantial Completion is achieved. Should Construction Manager fail to meet the Final Completion of the Work within the required time period, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, \$1000.00 for each calendar day thereafter until Final Completion is achieved. These liquidated damages shall be payable in addition to any expenses or costs payable by the Construction Manager to the Owner under the provisions of the Contract Documents. Construction Manager hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the Parties agree represents a fair and reasonable estimate of Owner's actual damages at the time of contracting if Construction Manager fails to substantially complete the Work in a timely manner. Should the Construction Manager not obtain final completion by the stipulated date, Owner shall be entitled to recover actual damages.
- 8.4. When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the laws of Florida, such day

shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday. The term “business day” as used herein shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.

9. **Exhibits Incorporated.** The following documents are expressly agreed to be incorporated by reference and made a part of this Contract:

- Exhibit A General Terms and Conditions
- Exhibit B Supplemental Terms and Conditions
- Exhibit C Form of Payment Bond
- Exhibit D Form of Performance Bond
- Exhibit E Insurance Requirements
- Exhibit F Bond Waivers and Payment Application Affidavit
- Exhibit G Form of Construction Manager Application for Payment
- Exhibit H Construction Manager Change Order
- Exhibit I Master Project Schedule Milestones
- Exhibit J Construction Manager’s Staffing Schedule
- Exhibit K GMP Amendment to Contract Between Owner And Construction Manager
- Exhibit L Truth-In-Negotiation Certificate
- Exhibit M Alachua County Minimum Wage Certification
- Exhibit N Contingency Fund Disbursement Request
- Exhibit O Contingency Fund Disbursement Log

10. **Notices**

10.1. All notices required or made pursuant to this Contract by Construction Manager to Owner shall be in writing and may be given either: (1) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (2) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, (3) by hand delivery to the appropriate address as herein provided, or (4) via electronic means e-mail or fax with confirmation copy to be mailed. Notices required hereunder shall be directed to the following address:

Public Works Department  
Attn: Ramon D. Gavarrete  
5620 NW MO\* Ln.  
Gainesville, FL 32653  
rgavarrete@alachuacounty.us

with a copy mailed to:

J.K. “Jess” Irby, Esq.  
Clerk of the Circuit Court  
Attn: Finance and Accounting



12 SE 1<sup>st</sup> Street,  
Gainesville, FL 32602  
[dmw@alachuaclerk.org](mailto:dmw@alachuaclerk.org)

And to:

Procurement Division  
Attention: Contracts  
12 SE 1<sup>st</sup> Street  
Gainesville, Florida 32601  
[acpur@alachuacounty.us](mailto:acpur@alachuacounty.us)

- 10.2. All notices required or made pursuant to this Contract by Owner to Construction Manager shall be made 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, Airborne, Emery, Purolator 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:

ATTENTION:  
D E SCORPIO CORPORATION  
3911 West Newberry Rd  
Gainesville, FL 32607  
Email Address: [jessica.maclaren@descorpiocorp.com](mailto:jessica.maclaren@descorpiocorp.com)

- 10.3. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section. Notice sent by mail shall be deemed received as of four (4) business days after the date of the postmark, and notices delivered by overnight courier shall be deemed received on the date when left at the address of the recipient. Notices sent by fax shall be effective the date faxed, if a business day, or the following business day otherwise.
11. **Modifications.** 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.
12. **Successors, Assigns, and Third-Party Beneficiaries.** Subject to other provisions hereof, the Contract shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties to the Contract. Except as otherwise expressly provided herein, neither this Contract nor any term or provision or obligation arising hereof or hereunder, shall be construed as being for the benefit of any party not a signatory hereto.
13. **Governing Law.** The Contract shall be interpreted under and its performance governed by the laws of the State of Florida. The sole and exclusive venue for any action under this Contract shall be the Eight Judicial Circuit Court in and for Alachua County, Florida.

14. **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. Nothing contained herein shall constitute a waiver by the County of sovereign immunity, the limits of liability, or other provisions of §768.28, Florida Statutes.
15. **Entire Agreement.** Each of the Parties hereto agrees and represents that the Contract comprises the full and entire agreement between the Parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Contract.
16. **Severability and Ambiguity.** It is understood and agreed by the Parties to this Agreement that if any of the provisions of the Agreement shall contravene, or be invalid under the laws of the State of Florida, such contravention or invalidity shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if jointly drafted by the Parties and no presumption, inference, or burden of proof shall arise favoring or disfavoring a Party by virtue or authorship of any or all of the Agreement's provisions. Each Party represents and agrees that it has had the opportunity to seek the advice of appropriate professions, including legal professionals, in the review and execution of this Agreement.

17. **Construction**

17.1. Unless the context of this Contract otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof," "herein," "hereunder" and similar terms in this Contract refer to this Contract as a whole and not to any particular provision of this Contract, unless stated otherwise. Captions and section headings used herein are for convenience only and shall not be used in construing this Contract. Additionally, the Parties hereto acknowledge that the preparation and negotiation of this contract has been a joint effort, that they have carefully reviewed this Contract and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Contract shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.

17.2. In the event of conflicts or discrepancies among the Contract Documents (*e.g.*, this Contract, the exhibits thereto, the deliverables hereunder, etc.), interpretations will be based on the following priorities:

17.2.1. The GMP Amendment to this Contract (upon approval and execution by the Parties).

- 17.2.2. Exhibit B to this Contract.
- 17.2.3. Exhibit A to this Contract.
- 17.2.4. Other written and fully executed Amendments to the Contract.
- 17.2.5. Written and fully executed Change Orders.
- 17.2.6. This Contract.
- 17.2.7. The Final 100% Design and Construction Documents (TBD).
- 17.2.8. All other Exhibits and documents enumerated in this Contract as part of the Contract Documents.

18. **Counterparts.** This Contract may be executed in any number of and by the different Parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument. Receipt via fax or email with pdf attachment by a party or its designated legal counsel of an executed counterpart of this Amendment shall constitute valid and sufficient delivery in order to complete execution and delivery of this Amendment and bind the Parties to the terms hereof.

19. **Electronic Signatures.** The Parties agree that an electronic version of this Agreement shall have the same legal effect and enforceability as a paper version. The Parties further agree that this Agreement, regardless of whether in electronic or paper form, may be executed by use of electronic signatures. Electronic signatures shall have the same legal effect and enforceability as manually written signatures. The County shall determine the means and methods by which electronic signatures may be used to execute this Agreement and shall provide the Contractor with instructions on how to use said method. Delivery of this Agreement or any other document contemplated hereby bearing an manually written or electronic signature by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

**20. U.S. Department of Homeland Security E-Verify System.**

20.1. The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the agreement. The E-Verify system is located at <https://www.uscis.gov/e-verify>.

20.2. The Contractor shall expressly require any subcontractors performing work or providing services pursuant to the County's agreement to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the agreement. The E-Verify system is located at <https://www.uscis.gov/e-verify>.

**21. Alachua County Covid-19 Procedure**

Alachua County has established safety protocols to protect the spread of COVID-19 in the workplace and among the workforce. The Contractor agrees to comply with adopted Alachua County COVID-19 Procedure, as amended, concerning masking and social distancing as applicable to employees while working or providing services inside a Covered Alachua County Facility.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

**ALACHUA COUNTY, FLORIDA**

By: Marihelen Wheeler

Marihelen Wheeler, Chair  
Board of County Commissioners

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

**ATTEST**

J.K. Irby  
J.K. "Jess" Irby, Esq. (May 12, 2022 16:06 EDT)

J.K. "Jess" Irby, Esq., Clerk  
(SEAL)

**APPROVED AS TO FORM**

DocuSigned by:  
David Forziano  
70E5E81DBE1E4D3...

Alachua County Attorney's Office

**CONSTRUCTION MANAGER**

DocuSigned by:  
By: Domenic Scorpio  
79C98C5D20C5462...  
Print: Domenic Scorpio  
Title: President and CEO  
Date: 4/1/2022

## **EXHIBIT A: GENERAL TERMS AND CONDITIONS**

### **1. INTENT OF CONTRACT DOCUMENTS.**

- 1.1. It is the intent of the Contract Documents to describe a functionally complete project to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. If the Contract Documents include words or terms that have a generally accepted technical or industry meaning, then such words or terms shall be interpreted to have such standard meaning unless otherwise expressly noted in the Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in affect at the time the Work is performed, except as may be otherwise specifically stated herein. Provided, however, in the event the standard specification, manual, code, law or regulation is changed after the GMP Amendment has been executed by the Parties, Construction Manager shall be entitled to a Change Order equitably adjusting the Contract Amount and/or Contract Time to the extent such change materially impacts the Contract Time and/or Contract Amount.
- 1.2. If during the performance of the Work Construction Manager discovers a conflict, error or discrepancy in the Contract Documents, Construction Manager immediately shall report same to Design Professional and owner in writing, and before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification from Design Professional. This request should be in the form of a Request for Information (RFI) or Request for Clarification (RFC). The CM and the design professional will provide the owner with the background of the issue and a proposed resolution. Prior to commencing each portion of the Work, Construction Manager shall first take all necessary field measurements and verify the applicable field conditions. After taking such measurements and verifying such conditions, Construction Manager shall carefully compare such measurements and conditions with the requirements of the Contract Documents, taking into consideration all other relevant information known to Construction Manager, for the purpose of identifying and bringing to Owner's attention all conflicts or discrepancies with the Contract Documents.
- 1.3. Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, the Contract Documents shall be interpreted as provided in Section 17.2 of the Contract. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

## 2. INVESTIGATION AND UTILITIES.

- 2.1. Construction Manager shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, legal disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the Project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Construction Manager to acquaint itself with any applicable conditions shall not relieve Construction Manager from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.
- 2.2. Construction Manager shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Section 2 as the "Utilities." Construction Manager shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Construction Manager shall schedule and coordinate its Work around any such relocation or temporary service interruption. Construction Manager shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work.
- 2.3. If during the performance of the Work, Construction Manager or any subcontractor, sub-subcontractor, agent, employee or anyone else for whom Construction Manager is legally liable, causes a disruption to any Utilities service to other facilities or customers within the Project area, Construction Manager shall take all actions necessary and required to immediately restore such Utilities service. If Construction Manager fails to take such immediate actions Owner shall have the right to take whatever actions it deems necessary and required to immediately restore the disrupted services, and all costs incurred by Owner as a result thereof shall be reimbursed to Owner by Construction Manager within five (5) business days of written demand for same from Owner.

## 3. SCHEDULE.

- 3.1. The Construction Manager shall prepare and provide the various schedules set forth in Exhibit B to the Contract. Said schedules shall include but not be limited to an overall progress schedule for the Project which not only includes the Pre-Construction Phase and Construction Phase Services to be provided by Construction Manager hereunder, but also shall include the Design Professional's performance schedules ("Master Project Schedule").
- 3.2. The Master Project Schedule and all other schedules required hereunder shall be updated by Construction Manager as often as is specified in Exhibit B to the Contract. The Master Project Schedule and all updates to it shall be subject to Owner's and Design Professional's review comment, and approved by the owner. Construction Manager's submittal of a satisfactory Master Project Schedule and updates thereto and Owner's

acceptance of same shall be a condition precedent to Owner's obligation to pay Construction Manager.

**4. PROGRESS PAYMENTS.**

- 4.1. Preconstruction services shall be billed in accordance with 4.2 of the Contract.
- 4.2. Progress Payments / Construction Services: Construction Manager will submit separate applications for payment for each location. At the time it submits a GMP proposal to Owner, Construction Manager also shall submit to Owner and Design Professional, for their review, a Schedule of Values based upon the GMP proposal; all in C.S.I. format, listing the major elements of the Work and the dollar value for each element. That revised Schedule of Values, as further revised to reflect the final negotiated GMP amount and as approved by Owner, will be attached to the GMP Amendment and shall be used as the basis for Construction Manager's monthly Applications for Payment thereafter. This revised Schedule of Values shall be updated for the current month Change Orders and Construction Change Directives and submitted each month to Design Professional along with a completed and notarized copy of the Application for Payment form attached to the Contract as Exhibit G.
- 4.3. If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored off-site, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to Owner's satisfaction. Owner has the discretion whether or not to pay for such unincorporated materials.
- 4.4. Construction Manager shall submit four (4) notarized original copies of its monthly Application for Payment to Design Professional on or before the 7th day of each month for Work performed during the previous month. Approved invoices by the Design Professional received by the Owner after the 15th day of each month shall be considered for payment as part of the next month's application. Within seven (7) calendar days after receipt of each Application for Payment, Design Professional shall submit to Owner a Certificate for Payment in the amount recommended by Design Professional as being due and owing Construction Manager. Owner shall pay Construction Manager that portion of Design Professional's Certificate for Payment which Owner approves as being due and owing Construction Manager in accordance with the Florida Prompt Payment Act.
- 4.5. It is agreed that five percent (5%) of the amount earned through each progress payment shall be withheld by the County. The retainage shall be paid to the Construction Manager pursuant to Section 4.6.
- 4.6. Within 45 days of substantial completion as defined herein, or if not defined upon reaching beneficial occupancy or use, the Construction Manager, Design Professional and County will develop a list (the "List") of items required to achieve final completion of the Work at a location. County will provide a first draft of the List within twenty (20) days of notice of substantial completion. Construction Manager will notify the County of acceptance or of any changes requested within fourteen (14) calendar days of receipt of the draft List. The County shall deliver the final List to the Contractor no later than



five (5) days after it has been developed as set forth above. The failure to include on the List any corrective work or pending items not yet completed does not alter, waive or release the Construction Manager of its responsibility to complete such corrective work, pending items, or any other Work pursuant to the Contract. If the County fails to develop the List in the time specified, the Construction Manager may request payment for all retainage held by the County. If the Construction Manager fails to cooperate with the County in developing the List, or obligations under the List, the County is not obligated to pay the retainage. Upon completion of all items on the List, the Construction Manager may submit an application for Final Payment request for all remaining retainage withheld by the County. The County shall not be obligated to make payment for amounts that are the subject of a good faith dispute or a claim brought pursuant to §255.05, Florida Statutes. If a good faith dispute exists as to whether one or more items identified on the List have been completed pursuant to this Agreement, the County may continue to withhold an amount equal to 150 percent of the total cost to complete such items until the Construction Manager has rendered complete, satisfactory and acceptable such items. All items that require correction and that are identified after the preparation and delivery of the List remain the obligation of the Construction Manager.

- 4.7. Monthly payments to Construction Manager shall in no way imply approval or acceptance of Construction Manager's work, including but not limited to any defective or deficient work regardless of whether patent or latent.
- 4.8. Each Application for Payment shall be accompanied by a Release and Affidavit, in the form attached to the Contract as Exhibit F, and releases as provided by Florida Statutes Section 255.05 from all subcontractors and suppliers 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 period of time covered by the Application for Payment, unless Construction Manager's Surety provides Owner with written consent for all progress payments under the contract. 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.

## **5. PAYMENTS WITHHELD.**

- 5.1. Design Professional shall review each Application for Payment submitted by Construction Manager and shall make recommendations to Owner as to the proper amounts, if any, which may be owed Construction Manager under the Application for Payment. Design Professional's payment recommendation shall be evidenced by a Certificate for Payment issued by Design Professional to Owner. All Certificates for Payment are subject to Owner's review and approval. Both Design Professional and Owner 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, or rescind any amount previously certified and approved in a Certificate for Payment, and Owner may withhold any payments otherwise due Construction Manager under this Contract or any other agreement between Owner and Construction Manager, 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 fault or neglect 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 Contract Amount balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract 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 Construction Manager's expense, if such items are not cured by Construction Manager to Owner's reasonable satisfaction within seven (7) days after Construction Manager's receipt of written notice from Owner.

## **6. FINAL PAYMENT.**

- 6.1. Owner shall make final payment to Construction Manager within forty-five (45) calendar days after the Work is finally accepted by Owner in accordance with Paragraph 23.2 herein, provided that Construction Manager first, and as an explicit condition precedent to the accrual of Construction Manager's right to final payment, shall have furnished Owner with a properly executed and notarized contractors final payment affidavit conditioned only upon receipt of final payment) and releases from all subcontractors and suppliers in the form of the Release attached to the Contract as Exhibit F, or a duly executed copy of the surety's consent to final payment and such other documentation that may be required by the Contract Documents or Owner.
- 6.2. Construction Manager's acceptance of final payment shall constitute a full waiver of any and all claims by Construction Manager against Owner arising out of this Contract 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 payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Construction Manager hereunder or to the recovery of damages for defective Work not discovered by Owner or Design Professional at the time of final inspection. Owner retains the right to recover damages for the recovery of defective or deficient Work not discovered by Owner or Design Professional at the time of final inspection. After Final Payment has been made by the Owner to the Construction Manager, if the Owner identifies an obligation under the Contract Documents that the Construction Manager has not performed, then the Construction Manager shall perform the obligation. Owner shall reimburse the Construction Manager for the cost of performing the post Final Payment obligation only if: (i) the Owner has not previously reimbursed or otherwise paid the Construction Manager for performing that obligation, and (ii) the cost of reimbursing the Construction Manager is within the final amended Guaranteed Maximum Price approved and executed by the Parties.

## **7. SUBMITTALS AND SUBSTITUTIONS.**

- 7.1. Construction Manager shall carefully examine the Contract Documents for all

requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Construction Manager shall submit all such materials at its own expense and in such form and manner as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. The Construction Manager shall also carefully review and certify for accuracy and completeness all shop drawings and other submittals and then forward the same to the Design Professional for review and action. The Design Professional will transmit them back to the Construction Manager who will then issue the submittals to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote the expeditious handling of shop drawings and all other submittals. The Construction Manager shall request the Design Professional to make interpretations of the drawings or specifications requested of it by the subcontractors. The Construction Manager shall advise the Design Professional in writing which submittals or requests for clarification have the greatest urgency; the purpose being to enable the Design Professional to prioritize requests coming from the Construction Manager. The Construction Manager shall advise the Owner and Design Professional in writing when timely response is not occurring on any of the above.

- 7.2. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Owner and Design Professional if sufficient information is submitted by Construction Manager to allow Owner and Design Professional to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Owner from anyone other than Construction Manager and Design Professional. All such requests, to the extent possible, should be submitted prior to the setting of the GMP.
- 7.3. If Construction Manager wishes to furnish or use a substitute item of material or equipment, Construction Manager shall make application to Design Professional for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. If an item is to be substituted for an item on the list of green building materials, or if the proposed substitution will affect the Leadership in Energy and Environmental Design (LEED), or Green Globes score, or similar rating acceptable to the County, then the numerical effect shall be reported in the substitution request. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Construction Manager's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated.

The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Design Professional in evaluating the proposed substitute. Design Professional may require Construction Manager to furnish at Construction Manager's expense additional data about the proposed substitute.

- 7.4. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Contract Documents, Construction Manager may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to Design Professional, if Construction Manager submits sufficient information to allow Design Professional to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by Design Professional shall be the same as those provided herein for substitute materials and equipment.
  - 7.5. Design Professional shall be allowed a reasonable time within which to evaluate each proposed substitute. Design Professional and Owner shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without Owner's and Design Professional's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. Owner may require Construction Manager to furnish at Construction Manager's expense a special performance guarantee or other surety with respect to any substitute.
  - 7.6. Construction Manager shall promptly respond to all requests from Design Professional, Owner, or other entity hired by Owner.
8. **PRE-CONSTRUCTION PHASE SERVICES.** Construction Manager shall provide the following review and commentary services, in addition to any other Pre-Construction Phase Services required by the terms of this Contract:
- 8.1. **Review, Recommendations and Warranty:** The Construction Manager shall familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical and structural plans and specifications and shall follow the development of design from Schematic Pre-Construction Phase through Construction Documents Phase (as those phases are defined in the Design Agreement). The Construction Manager shall make recommendations with respect to the selection of systems and materials, and cost-reducing alternatives including assistance to the Design Professional and Owner in evaluating alternative comparisons versus long term cost effects, without assuming architectural or engineering responsibility. The evaluation shall address the benefits of the speed of erection and early completion of the Work. The Construction Manager shall furnish pertinent information as to the availability of materials and labor that will be required. The Construction Manager shall submit to the Owner and Design Professional such comments as may be appropriate concerning construction feasibility, estimated cost and practicality. The Construction Manager shall call to the Owner's and the Design Professional's attention any defects in the design, drawings and specifications or other documents of which it is aware. The Construction Manager shall prepare estimates of the construction cost utilizing the unit quantity survey method in the CSI format. These estimates shall be performed at the completion of each design deliverable, typically the

Program Verification Phase and shall be called the Program Estimate, followed by a Schematic Design Estimate, which shall be followed by the Design Development Estimate, which shall be followed by a 50% Construction Document Estimate, which shall be followed by the setting of the GMP.

- 8.2. **Review Reports:** Within fifteen (15) days after receiving the documents produced by the Design Professional, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph 8.1 above and on factors set out in Paragraphs 8.3 and 8.4 below. Within the same fifteen (15) day period, the Construction Manager shall submit to the Owner, with copies to the Design Professional, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as the Construction Manager may deem appropriate, and all actions taken by the Design Professional with respect to same, any comments the Construction Manager may deem to be appropriate with respect to separating the Work into separate subcontracts, alternative materials, and any other appropriate or required comments.

AT THE TIME THE GMP IS MUTUALLY ESTABLISHED, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED IN GMP AMENDMENT THE CONSTRUCTION MANAGER SHALL BE DEEMED TO HAVE WARRANTED TO OWNER, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT WITH EACH OTHER, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. FURTHER, THE CONSTRUCTION MANAGER SHALL BE DEEMED TO HAVE WARRANTED TO OWNER THAT THE WORK DESCRIBED IN THE CONSTRUCTION DOCUMENTS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE CONTRACT TIME.

- 8.3. **Long Lead Procurement:** The Construction Manager shall review the Project design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies) and consult with Design Professional concerning same. When each item is identified, the Construction Manager shall notify the subcontractors, Owner and the Design Professional of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. The Construction Manager shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items, and advise Owner and Design Professional of any problems or possible delays in delivery.

**8.4. Interfacing**

- 8.4.1. The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontractors and the general conditions items without duplication or overlap, and 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 the other separate subcontractors.

- 8.4.2. Without assuming any design responsibilities of the Design Professional, the Construction Manager shall include in the reports required under Paragraph 8.2

above, comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Design Professional may arrange for necessary corrections.

8.5. **Energy Efficient Construction.** The construction of buildings that are energy efficient to operate is a goal of the Owner. The majority of work listed below will be completed in a two-day workshop. Accordingly, the Construction Manager shall perform the following pre-construction services:

- 8.5.1. Lead the County through exercises reviewing energy modeling of green buildings provided by the Design Professional.
- 8.5.2. Present energy saving options and green product options.
- 8.5.3. Assist Design Professional in identifying cost of LEED, Green Globes or other certification as determined by the County and complete required analysis and documentation to identify the corresponding certification level.
- 8.5.4. Assist the County in selecting green materials, certified woods, and recyclables, and include assistance in scheduling long lead items, reuse of products, and identifying locally produced products.
- 8.5.5. Assist with direct purchases of green products.
- 8.5.6. Assist the Design Professional with the production of a list of green materials to be used on the project.
- 8.5.7. Educate interested subcontractors and suppliers about green building materials and systems and suggest green material substitutions to them.
- 8.5.8. Furnish documents to County in a timely manner, when requested for grant applications.
- 8.5.9. If directed by the County, The CM shall register the building with the U.S. Green Building Council (USGBC) within the first 30 days of construction. The CM shall prepare and submit the selected certification application no later than final completion and shall use its best efforts to obtain the certification for the building. The CM shall ensure that the construction documents are satisfactory to meet this purpose.

9. **CONSTRUCTION PHASE SERVICES.** Construction Manager shall provide the following services in addition to any other Construction Phase Services required by the terms of this Contract:

- 9.1. The Construction Manager shall arrange for all job-site facilities as required by the Owner and necessary to enable the Construction Manager and Design Professional to perform their respective duties and to accommodate any representatives of the Owner which the Owner may choose to have present on the job, the description of such facilities to be finalized prior to the establishment of the GMP.
  - 9.1.1. Prior to the issuance of the Notice to Proceed the Construction Manager shall provide a site utilization plan for approval by the County. The plan shall show fences, gates, parking areas, loading and unloading areas, staging and storage areas, field offices, and other necessary site features.
  - 9.1.2. Tangible personal property, otherwise referred to as job-site facilities, include, but are not limited to such things as trailers, toilets, typewriters and any other equipment necessary to carry on the Work. 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 usable life of the item.

- 9.1.3. When the Construction Manager wishes to supply job-site facilities from its own equipment pool, it shall first evaluate buy versus lease as discussed in subparagraph 9.1.2 above. If leasing is found to be the least expensive approach, then it may lease such job-site facilities from its own equipment pool, with written approval from the owner, at a price not greater than the lowest of the three (3) lease proposals obtained. The CM must provide a detailed allocation of its costs for such equipment to the Project.
- 9.2. The Construction Manager's administration of the Work shall include the following:
  - 9.2.1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, significant issues, etc.
  - 9.2.2. Maintain a roster of companies on the Project with names and telephone numbers of key personnel.
  - 9.2.3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
  - 9.2.4. Provide labor relations management for a harmonious, productive Project.
- 9.3. The Construction Manager also shall provide job site administration functions during construction to assure proper documentation, including but not limited to the following:
  - 9.3.1. Job Meetings: Conduct a preconstruction conference with each subcontractor after award of the subcontract and prior to the start of its portion of the Work. Hold weekly progress and coordination meetings, or more frequently if required by Work progress, to provide for the timely completion of the Work. Participants in the Monthly Project Status Meeting will include, at a minimum, CM, Design Professional, County Project Manager or its designee. The Construction Manager shall produce minutes of all meetings to include, at a minimum: attendees and contact info, old and new business, status of outstanding requests for information, clarification or correction, notices, change orders, schedule update, , material delivery schedule, safety. Owner, at its option, may produce the official minutes of any meeting attended by Owner.

Construction Manager shall use the job site meetings as a tool for the preplanning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all Parties to clearly understand. During these meetings, Construction Manager shall identify the party or Parties responsible for following up on any problems, delay items or questions, and Construction Manager shall note the action to be taken by such party or Parties. Construction Manager shall revisit each pending item at each subsequent meeting until resolution is achieved. Construction Manager shall attempt to obtain from all present any problems or delaying event known to them for appropriate attention and resolution.
  - 9.3.2. Shop Drawing Submittals/Approvals: Provide staff to review and approve shop drawings and other submittals and to implement procedures for transmittal to the Design Professional of such submittals for action, and closely monitor their review process.
  - 9.3.3. Material and Equipment Expediting: Provide staff to closely monitor material and

- equipment deliveries, check and follow-up on supplier commitments for all subcontractors and maintain a material and equipment expediting log.
- 9.3.4. Payments to Subcontractors: Develop and implement a procedure for the review, processing and payment of applications by subcontractors for progress and final payments.
- 9.3.5. Document Interpretation: Refer all questions for interpretation of the Contract Documents to the Design Professional in writing.
- 9.3.6. Reports and Project Site Documents: Record the progress of the Work. Submit written progress reports monthly to the Owner and the Design Professional, including information on subcontractors' Work, and the percentage of completion. Keep a daily log available to the Owner, the Design Professional, and any permitting authority inspectors.
- 9.3.7. Subcontractors Progress: Prepare periodic punch lists for subcontractors' work including unsatisfactory or incomplete items and schedules for their completion.
- 9.3.8. Substantial Completion: Pursuant to the provisions of Paragraph 23.1 of these General Terms and Conditions, ascertain when the Work or designated portions thereof are ready for the Design Professional's Substantial Completion inspections. From the punch lists of incomplete or unsatisfactory items prepared by Construction Manager and reviewed and supplemented by Design Professional, prepare a schedule for their completion indicating completion dates for the Owner's review. This notice will be provided to the owner fourteen (14) calendar days prior to the substantial completion inspection.
- 9.3.9. Final Completion: Monitor the subcontractors' performance on the completion of the Work and provide notice to the Owner and Design Professional when the Work is ready for final inspection. This inspection will be coordinated with all Parties fourteen (14) working days prior to the final inspection. Secure, review and certify compliance with the Contract Documents, then transmit to the Owner, through the Design Professional, all required guarantees, warranties, affidavits, releases, bonds, waivers, manuals, technical standards, permits, testing results, record drawings, and maintenance books. As a minimum, unless waived by Owner, the Construction Manager shall provide documentation on the following items along with notice of that the work is ready for final completion (no documentation is required if the materials and equipment is not included in the design):
- 9.3.9.1. Subcontracts and Purchase Orders
  - 9.3.9.2. Subcontractor Licenses
  - 9.3.9.3. Shop Drawing Submittal/Approval Logs
  - 9.3.9.4. Equipment Purchase/Delivery Logs
  - 9.3.9.5. Contract Drawings and Specifications with Addenda
  - 9.3.9.6. All warranties and guarantees, as a minimum:
  - 9.3.9.7. Cost Accounting Records
  - 9.3.9.8. Labor Costs
  - 9.3.9.9. Certificate of Substantial Completion
  - 9.3.9.10. Certificate of Sign-Off by Architect, Mechanical & Electrical Engineers; Includes final inspection report from the MEP and Structural Engineer.
  - 9.3.9.11. Final Property Survey



- 9.3.9.12. Maintenance Bond (if applicable)
- 9.3.9.13. Final Lien Waivers from Subcontractors
- 9.3.9.14. Material Costs
- 9.3.9.15. Equipment Costs
- 9.3.9.16. Cost Proposal Request
- 9.3.9.17. Payment Request Records
- 9.3.9.18. Meeting Minutes
- 9.3.9.19. Cost-Estimates
- 9.3.9.20. Bulletin Quotations
- 9.3.9.21. Lab Test Reports
- 9.3.9.22. Insurance Certificates and Bonds
- 9.3.9.23. Contract Changes
- 9.3.9.24. Permits & Inspections, Certificate of Occupancy (CO) and Use of Occupancy (UO)
- 9.3.9.25. Material Purchase Delivery Logs
- 9.3.9.26. Technical Standards, Manuals, Operating Manuals
- 9.3.9.27. Design Handbooks
- 9.3.9.28. "As-Built" Marked Prints
- 9.3.9.29. Operating & Maintenance Instruction
- 9.3.9.30. Start Up Reports
- 9.3.9.31. Boilers
- 9.3.9.32. Generators (Full Load 4 Hour Tests)
- 9.3.9.33. Chillers
- 9.3.9.34. Air Handlers (AHU)
- 9.3.9.35. Make-Up Air Units (MUAU's)
- 9.3.9.36. Water Treatment
- 9.3.9.37. Balance Reports for Air & Water
- 9.3.9.38. Firemen Test Results
- 9.3.9.39. Daily Progress Reports
- 9.3.9.40. Monthly Progress Reports
- 9.3.9.41. Correspondence Files
- 9.3.9.42. Transmittal Records
- 9.3.9.43. Inspection Reports
- 9.3.9.44. Bid/Award Information
- 9.3.9.45. Bid Analysis and Negotiations
- 9.3.9.46. Punch Lists
- 9.3.9.47. PMIS Schedule and Updates
- 9.3.9.48. Suspense Files of Outstanding Requirements
- 9.3.9.49. Policy and Procedure Manual
- 9.3.9.50. Roofing and flashing warranties
- 9.3.9.51. Joint Sealant warranties
- 9.3.9.52. Doors and hardware warranties
- 9.3.9.53. Flooring – Carpet, vinyl composition tile, sheet, ceramic, epoxy
- 9.3.9.54. Windows – aluminum, wood, vinyl, steel
- 9.3.9.55. Curtain wall and storefront work including anti chalking of aluminum, color

retention of members, air/water infiltration

- 9.3.9.56. Waste compactor and trash chute
  - 9.3.9.57. Window covering
  - 9.3.9.58. Toilet accessories
  - 9.3.9.59. Transmittal of trades, generally provided in three ring binders
  - 9.3.9.60. Plumbing and mechanical
  - 9.3.9.61. Fire Protection
  - 9.3.9.62. Hardware
  - 9.3.9.63. Sealants
  - 9.3.9.64. Masonry material – brick, concrete masonry unit (CMU)
  - 9.3.9.65. Fire Protection – sprinklers heads, fire extinguishers
  - 9.3.9.66. Electrical parts- wiring devices, fixtures lenses, lamps
  - 9.3.9.67. Electrical
  - 9.3.9.68. Elevator
  - 9.3.9.69. Data/Communication
  - 9.3.9.70. Data and Telephone Communication
  - 9.3.9.71. Data and Telephone cabling test results
- 9.3.10. Start-Up: With the Owner’s personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.
- 9.3.11. Record Drawings: Pursuant to the terms of Paragraph 10.2 hereafter, the Construction Manager shall monitor the progress of its own forces and its subcontractors on marked up field prints which shall be developed by Construction Manager into the final record drawings.
- 9.3.12. The Construction Manager shall maintain at the Project site, originals or copies of, on a current basis, all Project files and records, including, but not limited to, the following administrative records:
- 9.3.12.1. Subcontracts and Purchase Orders
  - 9.3.12.2. Subcontractor Licenses
  - 9.3.12.3. Shop Drawing Submittal/Approval Logs
  - 9.3.12.4. Equipment Purchase/Delivery Logs
  - 9.3.12.5. Contract Drawings and Specifications with Addenda
  - 9.3.12.6. Warranties and Guarantees
  - 9.3.12.7. Cost Accounting Records
  - 9.3.12.8. Labor Costs
  - 9.3.12.9. Material Costs
  - 9.3.12.10. Equipment Costs
  - 9.3.12.11. Cost Proposal Request
  - 9.3.12.12. Payment Request Records
  - 9.3.12.13. Meeting Minutes
  - 9.3.12.14. Cost-Estimates
  - 9.3.12.15. Bulletin Quotations
  - 9.3.12.16. Lab Test Reports
  - 9.3.12.17. Insurance Certificates and Bonds

- 9.3.12.18. Contract Changes
- 9.3.12.19. Permits
- 9.3.12.20. Material Purchase Delivery Logs
- 9.3.12.21. Technical Standards
- 9.3.12.22. Design Handbooks
- 9.3.12.23. “As-Built” Marked Prints
- 9.3.12.24. Operating & Maintenance Instruction
- 9.3.12.25. Daily Progress Reports
- 9.3.12.26. Monthly Progress Reports
- 9.3.12.27. Correspondence Files
- 9.3.12.28. Transmittal Records
- 9.3.12.29. Inspection and Safety Reports
- 9.3.12.30. Bid/Award Information
- 9.3.12.31. Bid Analysis and Negotiations
- 9.3.12.32. Punch Lists
- 9.3.12.33. PMIS Schedule and Updates
- 9.3.12.34. Suspense (Tickler) Files of Outstanding Requirements
- 9.3.12.35. Policy and Procedure Manual

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

9.5. The Construction Manager shall provide the following services with respect to the Work, to facilitate the smooth, successful and timely occupancy of the Project by Owner:

9.5.1. The Construction Manager shall provide consultation and Project management to facilitate Owner’s occupancy of the Project and provide transitional services to place the Work “on line” in such conditions as will satisfy Owner’s operations requirements. The services include the Construction Manager’s coordination of the delivery of Owner supplied furniture, fixtures and equipment for the Project.

9.5.2. The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The Construction Manager shall provide Owner’s operations and maintenance personnel with operations and maintenance training with respect to the equipment and systems being provided as part of the Work. This training may be videotaped by Owner for subsequent presentation to Owner’s operations and maintenance personnel.

9.5.3. The Construction Manager shall secure required guarantees and warranties, and shall assemble and deliver same to the Owner in the manner required by Owner.

9.5.4. The Construction Manager shall work with the Consultant and the County to create a Computerized Maintenance Management System (CMMS) for the building. All maintenance requirements for the building are to be included. The CMMS building shall be completed within 60 days of substantial completion.

9.6. The Construction Manager shall work from an approved list of approved green building materials.

9.7. Assist with the design of Project identification signs to be approved by the Owner, construct the signs, and then install and maintain the signs.

## **10. DAILY REPORTS, RECORD CONTRACT DOCUMENTS AND MEETINGS.**

- 10.1. Construction Manager shall prepare, maintain and submit to Design Professional and Owner, for their review and approval, the various logs, reports, and schedules set forth in Exhibit B to the Contract. The Construction Manager's complete performance of its obligation to prepare, maintain and submit those logs, reports, and schedules is a condition precedent to Owner's obligation hereunder to make any payments to Construction Manager. These logs, reports and schedules shall not constitute nor take the place of any notice required to be given by Construction Manager to Owner or Design Professional pursuant to the Contract Documents.
- 10.2. Construction Manager shall maintain in a safe place at the Project site one record copy and one permit set of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Construction Change Directive and Field Orders, as well as all written interpretations and clarifications issued by Design Professional, in good order and annotated to show all changes made during construction. The record Contract Documents shall be continuously updated by Construction Manager throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directive and Field Orders, and all concealed and buried installations of piping, conduit and utility services. Construction Manager shall certify the accuracy of the updated record Contract Documents. As a condition precedent to Owner's obligation to pay Construction Manager, Construction Manager shall provide evidence, satisfactory to Owner and Design Professional, that Construction Manager is fulfilling its obligation to continuously update the record Contract Documents. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the record Contract Documents as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The record Contract Documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The record Contract Documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to Owner and Design Professional for reference. Upon completion of the Work and as a condition precedent to Construction Manager's entitlement to final payment, the record Contract Documents, samples and shop drawings shall be delivered to Design Professional by Construction Manager for Owner.
- 10.3. Construction Manager shall advise Owner, its representatives and Design Professional of their requested or required participation in any meeting or inspection giving each at least one-week written notice unless such notice is made impossible by conditions beyond Construction Manager's fault and control, in which case at least 48 hours prior written notice must be given.

## **11. CONTRACT TIME AND TIME EXTENSIONS.**

- 11.1. Construction Manager shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Construction Manager or anyone for whom Construction Manager is liable. Unless

expressly noted otherwise in the Contract Documents, Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, and the coordination of Owner's suppliers and contractors as set forth in Section 14 herein.

- 11.2. Should Construction Manager be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Construction Manager, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes, lockouts, unusually severe weather conditions by comparison with the ten-year Alachua County, Florida, average not reasonably anticipatable, Construction Manager shall notify Owner and Design Professional in writing within seven (7) business days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Construction Manager may have had to request a time extension.
- 11.3. If Construction Manager encounters on the Project site any materials reasonably believed by Construction Manager to be petroleum or petroleum related products or other hazardous or toxic substances which have not been rendered harmless, Construction Manager immediately shall (i) stop Work in the area affected and (ii) report the condition to Owner in writing. If the Work is so stopped and hazardous material is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include, but not be limited to, an adjustment to the Contract Time as appropriate. If no hazardous material is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if the hazardous material was generated or caused by the Construction Manager or any of its employees, agents, subcontractors, or material suppliers, no Change Order will be required for an amendment in the Contract Time and Construction Manager shall indemnify the Owner and hold Owner harmless for any costs incurred by the Owner with respect to such hazardous material.
- 11.4. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which Owner and Design Professional may be responsible, in whole or in part, shall relieve Construction Manager of its duty to perform or give rise to any right to damages or additional compensation from Owner. Construction Manager expressly acknowledges and agrees that it shall receive no damages for delay. Construction Manager's sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due solely to the fault or neglect of Owner or solely from anyone for whom the Owner is liable, and such delays have a cumulative total of more than twenty-five (25) calendar days, Construction Manager may make a claim for its actual and direct delay damages accruing after said twenty-five (25) calendar days. Provided, however, Construction Manager expressly acknowledges and agrees that its actual and direct delay damages shall not exceed \$1,000.00 (as set forth in

Exhibit K) per calendar day. In no event shall Owner be liable to Construction Manager whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.

## 12. CHANGES IN THE WORK.

- 12.1. Owner shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, but in no event more than seven calendar (7) days after its receipt of such notification (unless Owner 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. Except in an emergency endangering life or property, or for minor changes ordered by the Design Professional, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to Construction Manager for any increased compensation or adjustment to the Contract Time without such written order. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally.
- 12.2. A Change Order, in the form attached as Exhibit H to the Contract, shall be prepared by the Construction Manager, reviewed by Design Professional and Owner, and executed promptly by the Parties after an agreement is reached between Construction Manager and Owner concerning the requested changes. Construction Manager shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as Owner and Construction Manager shall mutually agree.
- 12.2.1. The Owner may elect to charge changes in the Work against the established project contingency provided funds in the contingency are available and provided that doing so does not increase the Contract amount or the Contract time. The Contractor shall utilize the "Owner's Contingency Fund Disbursement Request Form" attached as Exhibit O to the Agreement, in this situation and shall keep a log of all items charged against the contingency amount, on the form attached as Exhibit P to the Agreement.
- 12.3. If Owner and Construction Manager are unable to agree on a Change Order for the requested change, Construction Manager shall, nevertheless, promptly perform the change as directed by Owner in a written Construction Change Directive. In that event, the Contract Amount and Contract Time shall be adjusted as directed by Owner. If Construction Manager disagrees with Owner's adjustment determination, Construction Manager must make a claim pursuant to Section 13 of these General Conditions or else be deemed to have waived any claim it might otherwise have had on that matter.
- 12.4. As it relates to subcontracted work, in the event a requested change is approved by Owner which results in either an increase or decrease to the Contract Amount, a Change Order shall be issued which increases or decreases the GMP 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 a subcontractor, a maximum of fifteen percent (15%) markup for all overhead and profit for subcontractors' direct labor and material costs and actual equipment costs. In the event such change work is performed by a sub-subcontractor, a maximum of ten percent (10%) markup for all overhead and profit for sub-subcontractors' direct labor and material costs and actual equipment costs. A

cumulative of fifteen percent (15%) markup is allowed for all overhead and profit for all subcontractors' and sub-subcontractors' direct labor and material costs and actual equipment costs shall be permitted. Contractor shall not be entitled to any mark-up for Change Order or Construction Change Directive work, nor shall the Contractor's fee, overhead or profit be increased or decreased as a result of any Change Order or Construction Change Directive work. Contractor shall not retain any portion of this change Work or mark up for himself for any reason.

12.5. Owner shall have the right to conduct an audit of Construction Manager's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Construction Manager's claim with respect to Construction Manager's costs associated with any Change Order or Construction Change Directive.

12.5.1. CM agrees that it is responsible for submitting accurate cost and pricing data to support its Change Order Proposal Requests or other contract price adjustments under the Agreement. CM further agrees to submit Change Order Proposal Requests with cost and pricing data, which is accurate, complete, current, and in accordance with the terms of the Agreement with respect to pricing Change Orders, and that such pricing data will be presented in sufficient detail to enable the Owner to verify material, labor, equipment, and other costs, as well as markup.

12.5.2. CM agrees that the Owner and Owners Representative will have the right to examine the CM's records to verify the accuracy and appropriateness of pricing data used to price Change Order Proposal Requests. Even after a Change Order Proposal Request has been approved, the CM agrees that if the Owner or Owners Representative later determines the cost and pricing data submitted was inaccurate, incomplete, not current, or not in compliance with the terms of the Agreement regarding pricing of Change Orders; than an appropriate contract price reduction will be made.

12.6. Design Professional 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 Contract Amount, Contract Time or Project quality, and are generally within the scope of the Work. All such changes must be evidenced by a written order from Design Professional to Construction Manager, with a copy to Owner for review and approval. Construction Manager shall comply with all such orders.

12.7. The Schedule of Values (SOV) will be used to track the status of budget adjustments from the establishment of the GMP through the final application for payment. The Construction Manager will advise the Owner of each modification to the schedule of values via the contingency modification form prior to each month's Payment Application, approval of which will not be unreasonably withheld. The Guaranteed Maximum Price is cumulative of the individual line items in the SOV and as such, no line item is a guaranteed price excepting the General Conditions as outlined in Article 2.4 of Exhibit K, whether as a not to exceed value or lump sum as defined in the GMP.

### **13. CLAIMS AND DISPUTES.**

13.1. The term "Claim" as used herein shall mean any and all demands made by one party hereunder against the other party, whether such demand be for money, time or the assertion of any right or obligation that arises out of the Contract Documents.

13.2. Initial notice of Claims by Construction Manager shall be made in writing to Owner

and Design Professional within seven (7) calendar days after the first day of the event giving rise to such Claim or else Construction Manager shall be deemed to have waived the Claim. Written supporting data shall be submitted to Owner and Design Professional within fourteen (14) calendar days after the occurrence of the event, unless Owner grants additional time in writing, or else Construction Manager shall be deemed to have waived the Claim. All Claims shall be priced in accordance with the provisions of Paragraph 12.4 hereof.

- 13.3. Construction Manager shall proceed diligently with its performance as directed by Owner, regardless of any pending Claim, unless otherwise agreed to by Owner in writing. Owner shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.
- 13.4. Prior to the initiation of any action or proceeding permitted by this Contract to resolve disputes between the Parties, the Parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power. Failing resolution, and prior to the commencement of depositions in any litigation between the Parties with respect to the Project, the Parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may request a court of law to order mediation under Florida Statutes Section 44.102.
- 13.5. Any litigation between the Owner and Construction Manager (which term for the purposes of this subparagraph shall include the Construction Manager's surety), whether arising out of any Claim or arising out of the Contract or any breach thereof, shall be brought, maintained and pursued only in the appropriate State courts of the State of 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. Venue of any such litigation between the Owner and Construction Manager shall lie and be only in the appropriate State courts of the State of Florida's Eighth Judicial Circuit in and for Alachua County, Florida. Construction Manager consents and submits to the jurisdiction of any such court and agrees to accept service of process from the State of Florida in any matter to be submitted to any such court.

#### **14. OTHER WORK.**

- 14.1. Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Construction Manager prior to starting any such other work. If Construction Manager believes that such performance will involve additional expense to Construction Manager or require additional time, Construction Manager shall send written notice of that fact to Owner and Design Professional within seven (7) calendar days of being notified of the other work or at such time that the Construction Manager determines that the planned work by others will impact the cost or schedule of the Construction Manager, provided that the Construction Manager provides the Owner with sufficient notice prior to incurring any actual cost or schedule impacts to



allow the Owner the reasonable opportunity to prevent the anticipated impacts if the Owner so chooses. If the work by others is in progress, notification shall be provided within three (3) calendar days. If Construction Manager fails to send the above required notice(s), Construction Manager will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount.

- 14.2. Construction Manager shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Construction Manager shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Construction Manager shall be responsible for all damage to the work of others caused by the performance of its Work. Further, Construction Manager shall not in any way cut or alter the work of others without first receiving the written consent of that other person and Design Professional.
- 14.3. If any part of Construction Manager's Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Construction Manager shall inspect and promptly report to Design Professional in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Such report must be made within seven (7) calendar days of the time Construction Manager first became aware of the delay, defect or deficiency or by the scheduled commencement of Construction Manager's dependent Work, whichever occurs first. Construction Manager's failure to report within the allotted time will constitute an acceptance of the other work as fit and proper for integration with Construction Manager's Work.

## 15. INSURANCE.

- 15.1. During the term of this Contract Construction Manager shall provide, pay for, and maintain, with companies satisfactory to Owner, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida. Simultaneously with the execution and delivery of this Contract by Construction Manager, Construction Manager has delivered to Owner properly executed Certificates of Insurance evidencing the fact that Construction Manager has acquired and put in place the insurance coverages and limits required hereunder. In addition, certified, true and exact copies of all insurance policies required shall be provided to Owner, on a timely basis, if requested by Owner. These Certificates and policies shall contain provisions that ten (10) calendar days written notice by registered or certified mail shall be given Owner of any cancellation, intent not to renew, or reduction in the policies' coverages, except in the application of the Aggregate Limits Provisions. Construction Manager shall also notify Owner, in a like manner, within two (2) calendar days after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Construction Manager from its insurer, and nothing contained herein shall relieve Construction Manager of this requirement to provide notice.

In the event of a reduction in the aggregate limit of any policy to be provided by it hereunder, Construction Manager shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. All insurance coverages of Construction Manager shall be primary to any insurance or self-insurance program carried by Owner applicable to this Contract.

- 15.1.1. The owner agrees to reimburse the CM in the amount of .725 of the established GMP for cost of required insurance. This amount shall appear in the General Conditions of the GMP.
- 15.2. Owner is self-insured, in accordance with Section 768.28, Florida Statutes, and will provide a certificate of self-insurance satisfactory to Construction Manager. Owner will provide Construction Manager with a certificate of coverage.
  - 15.2.1. The term "Board of County Commissioners of Alachua County, Florida" shall include Advisory Boards, Divisions, Departments and offices thereof and individual members and employees thereof in their official capacity, and/or while acting on behalf of Alachua County.
  - 15.2.2. All insurance policies, other than the Professional Liability policy and the Workers Compensation policy, provided by Construction Manager to meet the requirements of this Contract shall name The Board of County Commissioners of Alachua County, Florida, as that name is defined in subparagraph 15.2.1, above, as an additional insured as to the operations of Construction Manager under the Contract Documents and shall contain a severability of interests' provisions.
  - 15.2.3. Companies issuing the insurance policy or policies shall have no recourse against Owner for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Construction Manager.
  - 15.2.4. All insurance coverages of Construction Manager shall be primary to any insurance or self-insurance program carried by Owner applicable to this Contract, and the "Other Insurance" provisions of any policies obtained by Construction Manager shall not apply to any insurance or self-insurance program carried by Owner applicable to this Contract.
  - 15.2.5. The Certificates of Insurance, which are to be provided pursuant to paragraph 15.1 above, must identify this Contract.
  - 15.2.6. All insurance policies shall be fully performable in Alachua County, Florida, and shall be construed in accordance with the laws of the State of Florida.
  - 15.2.7. All insurance policies to be provided by Construction Manager pursuant to the terms hereof must expressly state that the insurance company will accept service of process in Alachua County, Florida and that the sole and exclusive venue for any action concerning any matter under those policies shall be in the Eighth Judicial Circuit Court in and for Alachua County, Florida.
- 15.3. The acceptance by Owner of any Certificate of Insurance pursuant to the terms of this Contract evidencing the insurance coverages and limits required hereunder does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown on the Certificates of Insurance are in compliance with the requirements of this Contract.
- 15.4. Before starting and until completion of all Services required hereunder, Construction Manager shall procure and maintain insurance of the types and to the limits

specified in Exhibit E, “Insurance Coverage,” which is attached hereto and made a part hereof. A copy of a current Certificate of Insurance in compliance with the specified requirements is attached hereto as Exhibit “1” to Exhibit “E”. Construction Manager shall request each of its sub-consultants and subcontractors to procure and maintain, until the completion of that sub-consultant’s or subcontractor’s work or services, insurance of the types and to the limits specified in **Exhibit E**. If any subcontractor’s limits fail to meet the limit’s specified in Exhibit E, the Construction Manager’s limits, which are primary, shall be construed to have met the intent of this paragraph.

- 15.5. If any insurance provided pursuant to this Contract expires prior to the completion of the Services required hereunder, renewal Certificates of Insurance and, if requested by Owner, certified, true copies of the renewal policies, shall be furnished to Owner ten (10) calendar days prior to the date of expiration.
- 15.6. Should at any time Construction Manager not maintain the insurance coverages required in this Contract, Owner may cancel the Contract and any Work Authorizations issued pursuant to the Contract or at its sole discretion shall be authorized to purchase such coverages and charge Construction Manager for such coverages purchased. If Construction Manager fails to reimburse Owner for such costs within thirty (30) calendar days after demand, Owner has the right to offset these costs from any amount due Construction Manager under this Contract. Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Owner to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Contract.
- 15.7. All insurance companies from whom Construction Manager obtains the insurance policies required hereunder must notify the owner of any changes and must meet the following minimum requirements:
- 15.7.1. 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.
- 15.7.2. The insurance company must have been in such insurance business continuously for not less than five (5) years immediately prior to the date of execution of this Contract.
- 15.7.3. The insurance company must have an A. M. Best policyholder rating of either “A+,” “A,” or “A-.”
- 15.7.4. The insurance company must have a current A. M. Best financial rating of “Class VI” or higher.
- 15.8. Owner shall maintain property insurance with respect to the Project. This property insurance shall only cover the interests of the Owner. The interests of the CM and the sub-contractors will be covered with the exception of tools and equipment. The CM and all sub-contractors must maintain Property Insurance to cover their property throughout the duration of this project. The property insurance shall be an “All Risk” type of policy, with coverage amounts, deductibles and sub-limits established by the applicable party. Any losses under the policies shall be adjusted by the owner and the Construction Manager as it pertains to their interests with claim being paid to the applicable party. The Owner and Construction Manager shall be liable and responsible for all deductibles
- 15.9. A current Certificate of Insurance (COI) showing coverage of the types and in the

amounts required is attached hereto as Exhibit E-1

**16. WAIVER OF SUBROGATION.**

- 16.1. The Construction Manager waives all rights of subrogation against the Owner, Design Professional, the Program Manager (if any), and the board members, directors, officers, agents, employees, sub-consultants and subcontractors of any of them, for damages or injuries caused by perils covered by any insurance maintained by a party hereunder, to the extent such damages or injuries are covered by such insurance, except no party hereto waives any rights they may have to the proceeds of such insurance held by another party. Construction Manager shall require similar waivers from all its subcontractors.
- 16.2. If any policies of insurance referred to in this Section require an endorsement to provide any waiver of subrogation referenced above, the owners of such policies will cause them to be so endorsed.

**17. INDEMNIFICATION.**

- 17.1. To the maximum extent permitted by Florida law, but subject to the monetary limitation that the extent of the Contractor's indemnification obligation shall not be less than One Million Dollars and 00 Cents (\$1,000,000.00) and not exceed the cumulative amount of the GMPs. The Construction Manager shall defend, indemnify and hold harmless Owner and its 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 and paralegals' fees, whether resulting from any claimed breach of this Contract by Construction Manager or from personal injury, property damage, direct or consequential damages, or economic loss, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Construction Manager or anyone employed or utilized by the Construction Manager in the performance of this Contract. 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 by any party 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 Contract 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 of limitations.
- 17.2. This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of Construction Manager insurance coverage. This indemnification provision shall survive the termination of this Contract between the County and the Construction Manager.
- 17.3. In any and all claims against the County or any of its 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 obligation under this Article 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 workmen's compensation acts, disability benefit acts or employee benefit acts.

**18. CLEANUP AND PROTECTIONS.**

- 18.1. Construction Manager agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. The CM must recycle as much waste material as reasonable. If Construction Manager fails to keep the Project site clean, Owner has the right, after providing a twenty-four (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.
- 18.2. Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Construction Manager from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Construction Manager to condition at least equal to that existing at the time of Construction Manager's commencement of the Work at no cost to the Owner.

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

**20. PERMITS, LICENSES AND TAXES.**

- 20.1. All permits and licenses necessary for the prosecution of the Work shall be procured and paid for by Construction Manager, except for permits as required by FDEP, FDOT, County regulations, and Water Management Districts. Permits and licenses to be acquired by Construction Manager with the assistance of Design Professional include, but are not limited to, building, site, and utility permits, as well as all Health Department permits required for the construction or relocation of Alachua County water and/or sanitary sewer lines and facilities, to the extent such water and/or sewer work is included in this Contract. If Construction Manager performs any Work without obtaining, or contrary to, such permits or licenses, Construction Manager shall bear all costs arising there from. All costs incurred by Construction Manager with respect to performing its obligations under this Paragraph 20.1 shall be considered a direct cost item and shall be considered reimbursable as Cost of the Work as provided for in the Contract. The Owner shall fully cooperate with the Construction Manager where necessary. Construction Manager shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.
- 20.2. Construction Manager shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work. Additionally, Construction Manager shall comply with and fully implement the sales tax savings program with respect to the Work, as set forth below in Paragraph

20.3.

20.3. Notwithstanding anything herein to the contrary, because Owner is exempt from sales tax and wishes to generate sales tax savings for the Project, Owner reserves the right to make direct purchases of various construction materials and equipment included in the Work. Construction Manager shall prepare purchase orders to vendors selected by Construction Manager, for execution by Owner, on forms provided by Owner. Construction Manager shall allow two weeks for execution of all such purchase orders by Owner. Construction Manager represents and warrants that it will use its best efforts to cooperate with Owner in implementing this sales tax savings program in order to maximize cost savings for the Project. With respect to all direct purchases by Owner, Construction Manager shall remain responsible for coordinating, ordering, inspecting, accepting delivery, storing, handling, installing, warranting and quality control for all direct purchases. Notwithstanding anything herein to the contrary, Construction Manager expressly acknowledges and agrees that any materials or equipment directly purchased by Owner pursuant this Paragraph 20.3 shall be included within and covered to the same extent as all other warranties provided by Construction Manager pursuant to the terms of the Contract Documents. Owner shall assign to Construction Manager any and all warranties and rights Owner may have from any manufacturer or supplier of any such direct purchases by Owner. The County Manager may sign Purchase Orders issued by the County for Direct Purchases.

## 21. TERMINATION FOR DEFAULT.

21.1. Construction Manager shall be considered in material default of the Contract and such default shall be considered cause for Owner to terminate the Contract, in whole or in part, as further set forth in this Article, if Construction Manager: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by Owner or Design Professional or as provided for in the approved Master Project Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work contrary to the requirements of the Contract; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) fails to promptly pay its subcontractors and suppliers; or (11) materially breaches any other provision of the Contract Documents.

21.2. If Owner determines that Construction Manager is in default under this Contract, Owner shall notify Construction Manager in writing of Construction Manager's default(s). If Owner determines that Construction Manager has not remedied and cured the default(s) within seven (7) calendar days following receipt by Construction Manager of said written notice, then Owner, at its option, without releasing or waiving its rights and remedies against Construction Manager's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Construction Manager's

right to proceed under the Contract, 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 default is solely a result of Construction Manager's failure to construct in accordance with the Master Project Schedule, then twenty-one (21) calendar days shall be allowed to cure the default. In making either the initial determination that Construction Manager is in default under this Contract or the subsequent determination that Construction Manager has failed to satisfactorily cure its default, Owner may rely solely upon the Design Professional's certification to Owner that in the Design Professional's opinion the Construction Manager is in default or has failed to satisfactorily cure its default. The County Manager has authority to terminate the Contract.

- 21.3. If Owner deems any of the foregoing remedies necessary, Construction Manager shall not be entitled to receive any further payments hereunder 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 Design Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the unpaid balance of the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Construction Manager shall pay promptly to Owner on demand the full amount of such excess, including costs of collection, attorney's fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by Owner to complete the Work, Construction Manager shall not be entitled to any portion of such excess, except for 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 21.3 shall be certified by Design Professional, upon application, and this obligation for payment shall survive termination of the Contract.
- 21.4. The liability of Construction Manager hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefor or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder. 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.
- 21.5. 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 22.1 below.

## **22. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION.**

- 22.1. Owner shall have the right to terminate this Contract without cause upon seven (7) calendar days' written notice to Construction Manager. In the event of such termination for convenience, Construction Manager's recovery against Owner shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred but Construction Manager shall not be entitled to any other or further recovery against Owner, including, but not limited to, damages, consequential or special damages, or any anticipated profit on portions of the Work not performed.
- 22.2. Owner shall have the right to suspend all or any portions of the Work upon giving Construction Manager two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended and later recommenced, Construction Manager's sole and exclusive remedy shall be to seek an extension to the Contract Time in accordance with the procedures set forth in the Contract Documents. In no event shall Construction Manager be entitled to any additional compensation or damages, except as otherwise expressly provided for in the Contract Documents. Provided, however, if the ordered suspension exceeds ninety (90) calendar days, Construction Manager shall have the right to terminate the Contract with respect to that portion of the Work which is subject to the ordered suspension.

## **23. COMPLETION.**

- 23.1. When the entire Work (or any portion thereof designated in writing by Owner) is ready for its intended use, Construction Manager shall notify Owner and Design Professional in writing that the entire Work (or such designated portion) is substantially complete and request that Design Professional issue a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion). The substantial completion inspection will be performed by the Design Professional, CM, and owner before the Certificate of Substantial Completion is issued by the Design Professional. Said written notice from Construction Manager shall include a proposed punch-list of all items of Work to be completed or corrected by Construction Manager. Ten copies of the punch-list shall be provided to the County. Within a reasonable time thereafter, Owner, Construction Manager and Design Professional shall inspect the Work (or designated portion thereof) to determine the status of completion. If Owner and Design Professional do not consider the Work (or designated portion) substantially complete, Design Professional shall notify Construction Manager in writing giving the reasons therefore. In such case, Construction Manager shall pay the costs of all additional Substantial Completion inspections. If Owner and Design Professional consider the Work (or designated portion) substantially complete, Design Professional shall prepare and deliver to Construction Manager a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Construction Manager. A final punch list will be provided by Owner in accordance with section 4.6. Failure to include an item on the final punch list does not



waive Owner's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment. Owner shall have the right to exclude Construction Manager from the Work and Project site (or designated portion thereof) after the date of Substantial Completion (or Partial Substantial Completion), but Owner shall allow Construction Manager reasonable access to complete or correct items on the final punch list.

- 23.2. When Construction Manager believes it has fully performed all of the Work, including all punch list items, Construction Manager shall deliver to Owner (1) Contractor's Final Payment Affidavit from Construction Manager certifying that all Work has been completed in accordance with the requirements of the Contract Documents and (2) Releases from every subcontractor, materialman and supplier that has supplied services or materials to the Project in the form outline in Exhibit F. That written affidavit shall be delivered to Owner by Construction Manager at the same time it submits its final Application for Payment. After receipt of such affidavit, the final Application for Payment and all other documents required for Project close-out, Design Professional and Owner 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 and Design Professional determine Construction Manager has completed the entire Work, Design Professional shall promptly issue a final Certificate for Payment, 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 due Construction Manager, as noted in the final Certificate for Payment, is due and payable; and (iii) all conditions precedent to Construction Manager's entitlement to final payment have been satisfied. Neither the final payment nor the retainage shall become due and payable until Construction Manager submits: (1) the final Release and Affidavit in the form attached to the Contract as Exhibit E, (2) or consent of surety( in accordance with Section 6.1) to final payment, and (3) if required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Design Professional may have issued its recommendations. Unless and until all Construction Manager's obligations under this Contract are performed, neither the final payment nor the retainage shall become due and payable.
24. **WARRANTY.** Construction Manager shall obtain and assign to Owner all express warranties given to Construction Manager by any subcontractors or by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project. Construction Manager expressly warrants to Owner that all materials and equipment to be incorporated into the Work shall be new unless otherwise specified. Further, Construction Manager expressly warrants to Owner that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Construction Manager further warrants to Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. 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. 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, any portion of the Work which is found to be defective or otherwise not in conformance with the requirements of the Contract Documents. All such corrective work is not reimbursable as Cost of Work by the Owner. 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. 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 Substantial Completion is achieved. 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. 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 shall conduct, jointly with Owner and Design Professional, a warranty inspection at six (6) months and eleven (11) months after the date Substantial Completion is achieved. 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.

## 25. TESTS AND INSPECTIONS.

- 25.1. Owner, Design Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection and testing. Construction Manager shall provide proper, safe conditions for such access. Construction Manager shall provide Design Professional and Building Inspector with timely prior written notice (at least 48 hours) of the readiness of the Work for all required inspections, tests or approvals.
- 25.2. Within 30 days of the start of construction, the Construction Manager shall provide Owner with a list of all tests and inspections to be performed.
- 25.3. If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Construction Manager shall assume full responsibility therefore, pay all costs in connection therewith and furnish Design Professional the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to Owner and Design Professional.
- 25.4. If any Work that is to be inspected, tested or approved pursuant to the Contract

Documents is covered without such inspection, testing or approval having been satisfactorily obtained by Construction Manager and without obtaining the written concurrence from Design Professional, such Work must, if requested by Design Professional, be uncovered for observation. Such uncovering shall be at Construction Manager's expense unless Construction Manager has given Design Professional 48 hour's written notice of Construction Manager's intention to cover the same and has requested written concurrence by Design Professional and Design Professional has not acted with reasonable promptness to respond to such notice and request. Need to uncover an item will require the Design Professional to notify the owner for discussion and approval. If any Work is covered contrary to written directions from Design Professional, such Work, if requested by Design Professional, must be uncovered for Design Professional's observation and be replaced at Construction Manager's sole expense.

- 25.5. Owner shall charge to Construction Manager and may deduct from any payments due Construction Manager all engineering and inspection expenses incurred by Owner in connection with any overtime work unless such overtime work was expressly requested by the Owner and the Construction Manager was on schedule. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday or holidays.
- 25.6. Neither observations by Design Professional or Owner, nor inspections, tests or approvals by others shall relieve Construction Manager from Construction Manager's obligations to perform the Work in accordance with the Contract Documents.
- 25.7. Construction Manager is responsible, without reimbursement from Owner, for re-inspection fees and costs; to the extent such re-inspections are due to the fault or neglect of Construction Manager.

## 26. DEFECTIVE WORK.

- 26.1. Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by Owner or Design Professional, Construction Manager shall as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the defective Work has been rejected by Owner or Design Professional, remove it from the site and replace it with non-defective Work. Construction Manager shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold Owner and Design Professional harmless for same.
- 26.2. If Owner or Design Professional consider it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others, Construction Manager, at Design Professional's or Owner's request, shall uncover, expose or otherwise make available for observation, inspection or tests as Owner or Design Professional may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Construction Manager shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is

not found to be defective, Construction Manager shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

- 26.3. 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.
- 26.4. Should Owner determine, at its sole opinion, it is in Owner's best interest to accept defective Work, the Owner may do so. Construction Manager shall bear all direct, indirect and consequential costs attributable to Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If Owner accepts such defective Work after final payment, Construction Manager shall promptly pay Owner an appropriate amount determined by Owner to adequately compensate Owner for its acceptance of the defective Work.
- 26.5. If Construction Manager fails, within a reasonable time after the written notice from Owner or Design Professional, to correct defective Work or to remove and replace rejected defective Work as required by Owner or Design Professional, or if Construction Manager fails to perform the Work in accordance with the Contract Documents, or if Construction Manager fails to comply with any of the provisions of the Contract Documents, Owner may, after seven (7) days' written notice to Construction Manager, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, Owner may exclude Construction Manager from any or all of the Project site, take possession of all or any part of the Work, and suspend Construction Manager's services related thereto, take possession of Construction Manager's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Construction Manager but which are stored elsewhere. Construction Manager shall allow Owner, Design Professional and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable Owner to exercise the rights and remedies under this Paragraph. All direct, indirect and consequential costs of Owner in exercising such rights and remedies shall be charged against Construction Manager, and a Change Order or a Construction Change Directive shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Construction Manager's defective Work. Construction Manager shall not be allowed an extension of the Contract Time because of

any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

## **27. SUPERVISION AND CONSTRUCTION MANAGER'S REPRESENTATIVE**

- 27.1. Construction Manager is responsible for supervising, coordinating and performing the Work with such care and skill as would be provided by a contractor with extensive and special expertise in the type of work required under the Contract Documents. Construction Manager is responsible for completing the Work so that it complies accurately and completely with the requirements of the Contract Documents. Construction Manager shall keep on the Work at all times during its progress a competent resident representative who shall not be replaced without prior written notice to Owner and Design Professional except under extraordinary circumstances. The representative shall have authority to act on behalf of Construction Manager. All communications given to the representative shall be as binding as if given to Construction Manager. Owner shall have the right to direct Construction Manager to remove and replace its Project representative or any other employee of Construction Manager or any employee of any subcontractor from this Project, with or without cause.
- 27.2. The Construction Manager shall maintain sufficient off-site support staff, and competent full-time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the Work and progress of the subcontractors. Construction Manager shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit J to the Contract. The Construction Manager shall not change any of those persons identified in Exhibit J unless mutually agreed to in writing by the Owner and Construction Manager. In such case, the Owner shall have the right to approve the replacement personnel. The Project Manager may approve, in writing, changes to Exhibit J.
- 27.3. The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this information to the Owner and all other affected Parties, such as the code inspectors of any permitting authority, the subcontractors, and the Design Professional. The Owner and Design Professional may attend meetings between the Construction Manager and its subcontractors; however, such attendance is optional and shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontracts.
- 27.4. The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to the Construction Manager. The Construction Manager shall develop and maintain a program, acceptable to the Owner and Design Professional, to assure quality control of the Work. The Construction Manager shall supervise the Work of all subcontractors, providing instructions to each when their portion of the Work does not conform to the requirements of the Contract Documents and Construction Manager shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should a disagreement occur between the Construction Manager and the Design Professional over the acceptability of the Work, the Owner, in its sole discretion, shall have the right to

determine the acceptability.

**28. ACCESS AND PROTECTION OF WORK.**

- 28.1. Construction Manager shall fully protect the Work and adjacent property from loss or damage and shall bear the cost of any such loss or damage until Substantial Completion is achieved. If Construction Manager or anyone for whom Construction Manager is legally liable is responsible for any loss or damage to the Work, or other work or materials of Owner or Owner's separate contractors, Construction Manager shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Construction Manager.
- 28.2. The Construction Manager shall ascertain what temporary enclosures, of building areas, including existing facilities, or other measures to protect the site, should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work and to protect and secure the Work, existing facilities in the area of the project, in periods when extreme weather conditions are likely to be experienced.
- 28.3. Construction Manager shall not permit any unsafe loading of any structure at the Project site, nor shall Construction Manager subject any part of the Work or adjacent property to any forces that will endanger it.
- 28.4. Construction Manager shall not disturb any benchmark established by Owner with respect to the Project. If Construction Manager, or its subcontractors, agents or anyone for whom Construction Manager is legally liable, disturbs Owner's benchmarks, Construction Manager shall immediately notify Owner and Design Professional. Owner shall have the benchmarks reestablished and Construction Manager shall be liable for all costs incurred by Owner associated therewith.
- 28.5. Cooperation. The Parties shall use reasonable efforts to assist each other in performing the Work, including providing reasonable access to the Owner's Service Location(s), providing information concerning the Service Location(s), making appropriate personnel available if requested to assist each party in performing the Work, and taking any other actions that each party may reasonably request from time to time to achieve the purposes and intent of this Contract.
- 28.6. Access. Upon the request of the Construction Manager, the Owner shall provide the Construction Manager and its Subcontractors with reasonable access to areas not already under control of the Construction Manager for performance of the Work. The Construction Manager also shall have access to these locations during the warranty period for purposes of performing its obligations thereunder.

- 29. EMERGENCIES.** Construction Manager shall take immediate action to prevent injury to any person or damage to any property (including the Work and any adjacent property) which otherwise might arise from an emergency event at the Project site. Construction Manager shall give Design Professional and owner written notice within forty-eight (48) hours after the occurrence of the emergency, if Construction Manager believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. The CM must inform the owner immediately of any injury requiring medical evacuation off the site or on-site death. If Design Professional determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be

issued to document the consequences of the changes or variations. If Construction Manager fails to provide the forty-eight (48) hours' written notice noted above, Construction Manager shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time. Construction Manager is obligated to promptly report in writing to Owner all accidents relating to the Work or site that result in any personal injury or property damage.

### **30. USE OF PREMISES.**

- 30.1. At all times during the performance of the Work, Construction Manager shall keep all of its operations, (including, but not limited to, the use and storage of all equipment and materials), within the Project site or such other areas as may be permitted by the Contract Documents. Construction Manager shall not use the Project site in any manner that is unreasonably burdensome or otherwise inconsistent with Owner's interest. Construction Manager is responsible for any damage to any such area or to the owner or occupant thereof, or any areas contiguous thereto, resulting from the performance of the Work.
- 30.2. Except as required by the Contract Documents or otherwise required in order for Construction Manager to satisfy its safety and security obligations under the Contract Documents, Construction Manager shall not erect or install, nor shall it permit any of its subcontractors, suppliers, subconsultants or any other party for whom it is legally responsible to erect or install, any signage upon the Project site or any other property of Owner, unless such signage has been expressly approved in writing by Owner, which approval may be withheld by Owner in its sole discretion.
- 30.3. Construction Manager acknowledges that Work may be performed at a particular Project site where Owner simultaneously is conducting and continuing its operations upon the same site. In such event, Construction Manager shall coordinate its Work so as to cause no unreasonable interference with or disruption to Owner's operations.
- 30.4. Owner may take early occupancy of all or any portions of the Work, at Owner's election, by designating in writing to Construction Manager the specific portions of the Work to be occupied and the date such occupancy shall commence. If any such specific early occupancy was not expressly identified at the time the GMP was established and such early occupancy negatively impacts Construction Manager's cost or time of performance, Construction Manager shall be entitled to an equitable adjustment to the Contract Amount and the Contract Time, all in accordance with the other terms and conditions of the Contract Documents.

### **31. SAFETY.**

- 31.1. Construction Manager is responsible for the safety and protection of all persons and property on or about the Project site during the progress of the Work. Further, it is Construction Manager's responsibility to protect from damage or loss all material and equipment to be incorporated into the Work which may be stored off the Project site. Construction Manager shall develop and implement, in accordance with the requirements of the Contract Documents (including any Owner requirements or regulations), a safety plan for the Work. A safety review checklist shall be submitted monthly to the Owner.

- 31.2. Construction Manager shall comply with all applicable codes, laws, ordinances, rules and regulations of Owner and any public body having jurisdiction over the Work, including all of their safety codes, laws, ordinances, rules and regulations. Construction Manager shall notify owners of adjacent property and of any underground structures or improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Construction Manager's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred.
- 31.3. At all times during the performance of the Work at the Project site, Construction Manager shall have designated, and located on a full-time basis at the Project site, a qualified individual whose responsibility shall be to monitor and enforce Construction Manager's safety program at the Project site. Construction Manager hereby designates its superintendent as that safety representative. Construction Manager may designate by written notice to Owner another individual, reasonably acceptable to Owner, who shall be Construction Manager's safety representative at the Project site.
- 31.4. Alcohol, drugs and all illegal substances are strictly prohibited on any Owner property. All employees of Construction Manager, as well as those of all subcontractors and those of any other person or entity for whom Construction Manager is legally liable (collectively referred to herein as "Employees"), shall not possess or be under the influence of any such substances while on any Owner property. Further, Employees shall not bring on to any Owner property any gun, rifle or other firearm, or explosives of any kind unless authorized by federal or state law.
- 31.5. Construction Manager acknowledges that the Work may be progressing on a Project site which is located upon or adjacent to an existing Owner facility. In such event, Construction Manager shall comply with the following:
- 31.5.1. All Owner facilities are smoke free. Smoking is strictly prohibited;
  - 31.5.2. Construction Manager shall strictly limit its operations to the designated work areas and shall not permit any Employees to enter any other portions of Owner's property without Owner's expressed prior written consent;
  - 31.5.3. All Employees are prohibited from distributing any papers or other materials upon Owner's property, and are strictly prohibited from using any of Owner's telephones or other office equipment;
  - 31.5.4. All Employees shall at all times comply with the OSHA regulations with respect to dress and conduct at the Project site. Further, all Employees shall comply with the dress, conduct and facility regulations issued by Owner's officials onsite, as said regulations may be changed from time to time;
  - 31.5.5. All Employees shall enter and leave Owner's facilities only through the ingress and egress points identified in the site utilization plan approved by Owner or as otherwise designated, from time to time, by Owner in writing;
  - 31.5.6. When requested, Construction Manager shall cooperate with any ongoing Owner investigation involving personal injury, economic loss or damage to Owner's facilities or personal property therein;
  - 31.5.7. The Employees may not solicit, distribute or sell products while on Owner's property. Friends, family members or other visitors of the Employees are not



permitted on Owner's property; without prior approval.

31.5.8. At all times, Construction Manager shall adhere to Owner's safety and security regulations, and shall comply with all security requirements at Owner's facilities, as said regulations and requirements may be modified or changed by Owner from time to time.

31.5.9. Maintain visitor sign-in sheets.

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

33. **MATERIAL SAFETY DATA SHEET.** If any chemicals, materials, or products containing toxic substances, as defined by Chapter 442, Florida Statutes or any local, state or federal statutes or regulations, are contained in the products used on site or incorporated into the construction by the Construction Manager or any of its subcontractors, the Construction Manager shall provide to the Design Professional and Owner a Material Safety Data Sheet at the time of each delivery or prior to each new use of such product.

34. **AUDITING RIGHTS AND INFORMATION.**

34.1. Construction Manager shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of ten (10) years from the date of termination of this Contract or the date the Project is completed, whichever is later or such longer period of time as may be required by law. 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, 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. Employees' personal information is excluded, if exempt under Ch. 119, F.S. The access, inspection, copying and auditing rights shall survive the termination of this Contract.

34.2. If at any time, 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 \$50,000.00, Construction Manager shall pay to Owner the Overcharged Amount and 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. 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 seven (7) 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.

### **35. PROJECT RECORDS**

#### **35.1. General Provisions:**

35.1.1. Any document submitted to the County may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency per §119.011(12), Florida Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law.

35.1.2 In accordance with §119.0701, Florida Statutes, the Contractor/Professional, *when acting on behalf of the County*, as provided under 119.011(2), Florida Statutes, shall keep and maintain public records as required by law and retain them as provided by the General Record Schedule established by the Department of State. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law. Additionally, the Contractor/Professional shall provide the public records at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

35.1.3 Contractor/Professional shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the Contractor/Professional does not transfer the records to the County.

35.2. This Article 34, including all access, inspection, copying, auditing, reimbursement,

repayment rights and indemnification shall survive the termination of this Contract.

**35.2 Confidential Information:**

35.2.1 During the term of this Agreement, the Contractor/Professional may claim that some or all of Contractor/Professional's information, including, but not limited to, software documentation, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as confidential and proprietary by Contractor/Professional in accordance with §812.081, Florida Statutes, or other law, and is exempt from disclosure under the Public Record Act. Contractor/Professional shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the County shall use reasonable efforts to maintain the confidentiality of the information properly identified by the Contractor/Professional as "Confidential Information" or "CI."

35.2.2 The County shall promptly notify the Contractor/Professional in writing of any request received by the County for disclosure of Contractor/Professional's Confidential Information and the Contractor/Professional may assert any exemption from disclosure available under applicable law by seeking a protective order against disclosure from a court of competent jurisdiction. Contractor/Professional shall protect, defend, indemnify, and hold the County, its officers, employees and agents free and harmless from and against any claims or judgments arising out of a request for disclosure of Confidential Information. Contractor/Professional shall investigate, handle, respond to, and defend, using counsel chosen by the County, at Contractor/Professional's sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent. Contractor/Professional shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorney fees, court costs, and expert witness fees and expenses. Upon completion of this Agreement, the provisions of this paragraph shall continue to survive. Contractor/Professional releases County from claims or damages related to disclosure by County.

**35.3 Project Completion:** Upon completion of the Work, or in the event this Agreement is terminated, the Contractor/Professional, *when acting on behalf of the County* as provided under §119.011(2), Florida Statutes, shall transfer, at no cost, to the County all public records in possession of the Contractor/Professional or keep and maintain public records required by the County to perform the service. If the Contractor/Professional transfers all public records to the County upon completion or termination of the Agreement, it must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor/Professional keeps and maintains public records upon the

completion or termination of the Agreement all applicable requirements for retaining public records shall be met. All records stored electronically shall be provided to the County, upon request from the Counties custodian of public records, in a format that is compatible with the information technology systems of the County.

**35.4 Compliance:** The Contractor/Professional may be subject to penalties under §119.10, Florida Statutes, if the Contractor/Professional fails to provide the public records to the County within a reasonable time.

**IF THE CONTRACTOR/PROFESSIONAL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNTY REPRESENTATIVE AT EMAIL: [publicrecordsrequest@alachuacounty.us](mailto:publicrecordsrequest@alachuacounty.us); PHONE (352) 384-3132 Address 12 SE 1<sup>st</sup> Street, Gainesville, FL 32601**

**36. COMPLIANCE WITH LAWS.** Construction Manager agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, administrative orders, regulations and requirements applicable to the Project, including but not limited to those dealing with safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes). If Construction Manager observes that the Contract Documents are at variance therewith, it shall promptly notify Owner and Design Professional in writing. To the extent any law, rule, regulation, code, statute, or ordinance requires the inclusion of certain terms in this Contract in order for this Contract to be enforceable, such terms shall be deemed included in this Contract. Notwithstanding anything in the Contract Documents to the contrary, it is understood and agreed that in the event of a change in any applicable laws, ordinances, rules or regulations subsequent to the date the GMP Amendment has been executed that increases the Construction Manager's time or cost of performance of the Work, Construction Manager is entitled to a Change Order for such increases, except to the extent Construction Manager knew or should have known of such changes prior to the date of the GMP Amendment

**37. SUBCONTRACTS.**

37.1. The Construction Manager shall review the design and shall determine how it desires to divide the sequence of construction activities. Construction Manager will determine the breakdown and composition of bid packages for award of subcontracts, based on the current Master Project Schedule, and shall supply a copy of that breakdown and composition to Owner and Design Professional for their review. Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and costs.

37.2. A subcontractor is any person or entity who is performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with Construction Manager.

Construction Manager shall be solely responsible for and have control over the subcontractors. Construction Manager shall negotiate all Change Orders, Construction Change Directive, Field Orders and Request for Proposals, with all affected subcontractors and shall review the costs of those proposals and advise Owner and Design Professional of their validity and reasonableness, acting in Owner's best interest, prior to requesting approval of each Change Order from Owner.

- 37.3. When Construction Manager submits its guaranteed maximum price proposal to Owner, Construction Manager also shall submit to Owner a list of the names, addresses, licensing information and phone numbers of the subcontractors Construction Manager intends to use for each portion of the Work, as well as identifying in writing those portions of the Work it intends to perform with its own employees. The list identifying each subcontractor cannot be modified, changed, or amended without prior written approval from Owner. Any and all work to be self-performed by Construction Manager that exceeds \$50,000 must be competitively bid and approved in writing by Owner in its sole discretion prior to commencement of such work. Construction Manager shall continuously update that subcontractor list, so that it remains current and accurate throughout the entire performance of the Work. Construction Manager shall not enter into a subcontract with any subcontractor, if Owner reasonably objects to that subcontractor. Construction Manager shall not be required to contract with anyone it reasonably objects to. As part of the Project document file to be maintained by Construction Manager at the Project site, Construction Manager shall keep on file a copy of the license for every subcontractor and sub-subcontractor performing any portion of the Work, as well as maintain a log of all such licenses. All subcontracts between Construction Manager and its subcontractors shall be in writing and are subject to Owner's approval. Further, 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 workers' compensation and professional liability, (5) assign all warranties directly to Owner, (6) identify Owner as an intended third-party beneficiary of the subcontract, and (7) incorporate Exhibit E into all of its subcontracts (and require similar incorporation into all sub-subcontracts). Construction Manager shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Paragraph 36.3 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.
- 37.4. CM shall fully disclose to owner the nature of any interests and relationship with any related entity under consideration as a subcontractor. Written approval from the Owner must be obtained by the CM before any related entity to provides labor, material, equipment, or services in connection with the performance of work.
- 37.5. The subcontractor must agree to provide field (on-site) supervision through a

named superintendent for each trade (e.g., general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years.

37.6. Unless otherwise expressly agreed to by Owner in writing, all subcontracts shall provide:

37.6.1. **LIMITATION OF REMEDIES - NO DAMAGES FOR DELAY** That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Design Professional or attributable to the Owner or Design Professional and including claims based on breach of contract or negligence, shall be an extension of its contract time. In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum is limited in accordance with Exhibit A, section 12.4. The subcontract shall require the subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the subcontract price, damages, losses or additional compensation. Further, Construction Manager shall incorporate terms of Paragraph 11.4 in all of its subcontracts and require all subcontractors to similarly incorporate such terms into their sub-subcontracts.

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

### **38. MARKET ANALYSIS AND SOLICITATION OF BIDS.**

38.1. The purpose of this Paragraph is to ensure that Construction Manager makes a genuine effort to stimulate subcontractor interest in the Project and maximize participation of potential qualified subcontractors in the bidding process. At all times Owner shall have access to and the right to require copies of all correspondence, records, files and other bid documents (including all bid responses) with respect to the bidding process. Further, Construction Manager shall notify Owner of the date, time and place of all bid openings and Owner shall have the right to attend any and all such bid openings. All bid openings shall be conducted in Alachua County, Florida. Finally, Construction Manager shall develop in writing subcontract bidding procedures for Owner's review and approval. Once those procedures have been approved by Owner, Construction Manager shall not deviate from such procedures without obtaining Owner's prior written consent.

38.1.1. The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Work; Construction Manager shall make an analysis as necessary to (i) determine and report on availability of labor, materials, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (ii) in light of such

determination, make recommendations and take action as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of Work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the Contract Time.

- 38.1.2. Within thirty (30) days after execution of this Contract, Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, Construction Manager shall submit to Owner and Design Professional a list of potential bidders for their review and approval. Construction Manager shall be responsible for promoting and encouraging bid competition.
- 38.1.3. The Construction Manager shall carry out an active program of stimulating interest of qualified subcontractors in bidding on the Work and of familiarizing those bidders with the requirements of this Project.
- 38.1.4. The Construction Manager shall encourage the use of energy efficient building materials and systems by educating bidders on such systems and process substitution requests.
- 38.2. Construction Manager shall prepare invitations for bids and all other appropriate bid documents for all procurement of long lead items, materials and services, for subcontractor contracts and for site utilities. All such invitations for bids and bid packages shall be submitted to Design Professional and Owner for their review and approval prior to distribution to bidders
  - 38.2.1. Except as hereafter provided in Paragraph 37.5, all subcontracts are to be awarded to the lowest responsive and responsible bidder.
  - 38.2.2. Subcontracts not exceeding Fifty Thousand Dollars (\$50,000.00) may be awarded based upon verbal bids. Construction Manager shall obtain a minimum of at least two (2) verbal or written bids on all such subcontracts. All such bids received by Construction Manager shall be entered on a bid tabulation sheet and a copy of both the bids and the tabulation sheet shall be sent to Owner and Design Professional for their review and comments prior to Construction Manager awarding the subcontract.
  - 38.2.3. Subcontracts exceeding Fifty Thousand Dollars (\$50,000.00) must be publicly advertised for at least two (2) consecutive weeks prior to the established bid opening time and date. All such bids must be in writing and shall be received and opened in the manner and at the location, date and time established in the bid documents. All such bids received by Construction Manager shall be entered on a bid tabulation sheet and a copy of both the bids and the tabulation sheet shall be sent to Owner and Design Professional for their review and comment prior to Construction Manager awarding the subcontract.
- 38.3. As part of its bid preparation, Construction Manager shall review the specifications and drawings prepared by Design Professional. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by Construction Manager shall be brought to the attention of Owner and Design Professional in written form.
- 38.4. For each subcontract that exceeds Fifty Thousand Dollars (\$50,000.00),

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

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

39. **PARTNERING.** The Construction Manager, prior to commencement of the Construction Phase Services, shall prepare and submit for the Owner's approval a proposed Partnering Program for the Project. The Partnering Program shall contain, at a minimum, procedures for the enhancement of communication and cooperation between the Owner, Construction Manager, Design Professional, separate contractors, inspectors and other consultants and subcontractors on the Project, as well as procedures for the speedy and efficient resolution of problems and disagreements during construction. Upon approval by the Owner, the Partnering Program shall be implemented and coordinated by the Construction Manager throughout the remainder of the Project.

40. **SECURING AGREEMENT.** 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 L. The Construction Manager's compensation shall be adjusted to exclude any sums by which Owner determines the compensation was increased due to inaccurate, incomplete, or non-current wage rates or other factual unit costs.

41. **PUBLIC ENTITY CRIMES.** By its execution of this Contract, 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."

42. **LOCATION IDENTIFICATION:** All forms and documents required by this Agreement should be clearly annotated as to which Location, as identified in Section 2.1.1, to which they pertain.
43. **EQUAL EMPLOYMENT OPPORTUNITY/NON-DISCRIMINATION/ SBE.** In performing all services to be provided hereunder, the Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The 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. The Construction Manager shall post in conspicuous places, available to all employees and applicants for employment notices setting forth the terms of this Equal Employment Opportunity Non-Discrimination Clause and stating that all qualified candidates will receive consideration for employment without regard to race, color, religion, sex or national origin. Construction Manager shall comply with Owner's current SBE policy. Construction Manager's SBE minimum goal for this Project is fifteen (15) percent (15%). With each payment application submitted by Construction Manager, as a condition precedent to its entitlement to payment, Construction Manager shall also submit, on the form attached as part of Exhibit G, a monthly written report to Owner concerning the status of all payments owed and paid by Construction Manager to its various SBE subcontractors and suppliers. Said monthly status report shall be in such form and contain such detail as may be required by Owner.
44. **CHANGED CONDITIONS.** 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 Design Professional 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 Contract Amount or Contract 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 Document 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 Contract 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 Contract Amount or Contract Time, the dispute resolution procedure set forth in the Contract Documents shall be complied with by the Parties.

45. **OWNERSHIP RIGHTS.** Owner will be the exclusive owner of all work product delivered to Owner in connection with or during the performance of services provided pursuant to this Contract ("Work Products"); provided, however, that Construction Manager shall be the exclusive owner of any and all intellectual property rights in the Work Products, including patents, copyrights, trade secrets, trademarks, moral rights, and similar rights of any type under the laws of any governmental authority (collectively, "Intellectual Property Rights"). Construction Manager hereby grants Owner and its designees the exclusive, limited, transferable, perpetual and royalty free right to use the Intellectual Property Rights in the Work Product for the sole purpose of implementing, operating and using the Services in the Work Product at Owner's Service Location(s).

#### **END OF GENERAL TERMS AND CONDITIONS**

## **EXHIBIT B: SUPPLEMENTAL TERMS AND CONDITIONS**

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

1. Construction Manager shall provide the Owner, its representatives and the Design Professional with electronic copies of a Policy and Procedure Manual developed and updated in accordance with the following requirements:
  - 1.1. Upon execution of the Contract, the Construction Manager shall develop a draft of the comprehensive Policy and Procedure Manual describing the services to be provided by the Construction Manager per the Contract Documents. This shall provide a plan for the control, direction, coordination and evaluation of the Work performed throughout the Project; the Project organization including identification of key personnel, responsibilities of the Construction Manager, Owner and Design Professional; Work flow diagrams; and strategy for bidding and subcontracting the Work. The Owner shall have the right to review the Policy and Procedure Manual and to approve its content and format. The Policy and Procedure Manual may be updated as necessary throughout the Pre-Construction and Construction Phases, but substantive changes will not be made without the Owner's prior written concurrence. Electronic copies of the Policy and Procedure Manual and any updates shall be submitted to the Owner and Design Professional. In developing the Policy and Procedure Manual, the Construction Manager shall coordinate and consult with the Owner and the Design Professional. The initial manual shall be submitted to the Owner for approval.
  - 1.2. Contents of Policy and Procedure Manual: The Policy and Procedure Manual shall describe in detail the procedures for executing the Work and the organizations participating. The Policy and Procedure Manual shall include, as a minimum, the following sections:
    - 1.2.1. Project Definition: The known characteristics of the Project and sub-projects shall be described in general terms which will provide the participants a basic understanding of the Project and sub-projects.
    - 1.2.2. Project Goals: The schedule, budget, physical, technical and other objectives for the Project shall be defined.
    - 1.2.3. Project Strategy: A narrative description of the Project delivery methods which shall be utilized to accomplish the Project goals.
    - 1.2.4. Project Work Plan: A matrix display of the Work to be performed by the Construction Manager, as well as the services and items to be furnished by the Design Professional and the Owner during each phase of the Project.
    - 1.2.5. Project Organization: A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Design Professional, and other supporting organizations and permitting review agencies. Detailed charts, one each for the Construction Manager and Design Professional, showing organizational elements participating in the Project shall be included.
    - 1.2.6. Responsibility Performance Chart: A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Design Professional, and

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

- 1.2.7. Flow Diagrams: These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress, and change orders.
- 1.2.8. Written Procedure: The Construction Manager will provide written procedures for communications and coordination required between the Construction Manager, Design Professional and Owner throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.
- 1.2.9. Emergency Contact List: A complete list of the names, company affiliation and emergency contact phone numbers (both day and night) for all key Project personnel from Owner, Construction Manager and Design Professional, as well as from all subcontractors, subconsultants and suppliers of any of them. This list shall be continuously updated by Construction Manager throughout the Project duration, with Construction Manager distributing a copy of all updates to Owner and Design Professional.
- 1.3. This Policy and Procedure Manual shall be completed and submitted to the Design Professional and Owner for their review and Owner's approval as a condition precedent to payment by Owner to Construction Manager for any services provided in the Construction Phase under this Contract.
- 1.4. This Policy and Procedure Manual is merely an amplification and clarification of this Contract.
2. Construction Manager shall provide the following Project Management Information System ("PMIS"), which system shall be in place for both the Pre-Construction Phase and Construction Phase services to be provided by Construction Manager pursuant to this Contract.
  - 2.1. General:
    - 2.1.1. Commencing immediately after the Notice to Proceed is issued to Construction Manager by Owner, the Construction Manager shall implement and shall utilize throughout the life of this Contract all subsystems of the PMIS.
    - 2.1.2. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions.
    - 2.1.3. If requested by the Owner, the Construction Manager shall conduct a comprehensive workshop in Alachua County, Florida, for participants designated by the Owner and additional seminars as required by Owner to provide instruction with respect to the PMIS. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of the PMIS.
    - 2.1.4. The PMIS shall be described in terms of the following major subsystems:
      - 2.1.4.1. Narrative Reporting;

- 2.1.4.2. Schedule Control;
- 2.1.4.3. Cost Control and Estimating;
- 2.1.4.4. Project Accounting;
- 2.1.4.5. Accounting and Payment; and
- 2.1.4.6. Action Reports.

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

## 2.2. Narrative Reporting Subsystem.

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

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

- 2.2.2.1. A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.
- 2.2.2.2. A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
- 2.2.2.3. A Monthly Scheduling Narrative summarizing the current status of the overall Master Project Schedule and an explanation of all variances from the plan. This report shall include an analysis of the various Project sub schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
- 2.2.2.4. A Monthly Accounting Narrative describing the current cost and payment status for the entire Project. This report shall relate current encumbrances and expenditures to the budget allocations. An explanation for all variances shall be provided.
- 2.2.2.5. A Monthly Construction Progress Report during the Construction Phase summarizing the Work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations, programs, permits, construction problems and recommendations, and plans for the succeeding month.
- 2.2.2.6. A Daily Construction Diary during the Construction Phase describing events and conditions on the site.
- 2.2.2.7. Change orders, awarded Purchase Orders and requests for information and clarification report.
- 2.2.2.8. Direct purchase program report.
- 2.2.2.9. Small Business Enterprise report.
- 2.2.2.10. Project photographs.
- 2.2.2.11. Quality and safety reports.

2.2.3. The Reports outlined in subparagraphs 2.2.1 through 2.2.11 above shall be bound with applicable computer schedule reports and submitted monthly during Design and Construction Phases and shall be current through the end of the preceding month. Copies shall be delivered to the Owner and the Design Professional. A bound copy of the complete diary shall be submitted to the Owner at the conclusion of the Project.

## 2.3. Schedule Control Subsystem.

- 2.3.1. Master Project Schedule: Prior to the submittal of its first application for payment, the Construction Manager shall submit to the Owner and Design Professional for their review and approval a Master Project Schedule covering the planning and design approvals, construction, and Owner occupancy of the Project. This schedule shall conform to the format outlined in Paragraph 3.4 below. This schedule shall serve as the framework for the subsequent development of all detailed schedules and shall be updated monthly by the Construction Manager throughout the Project. Within fifteen (15) calendar days of the Construction Manager's submittal, the Owner and the Design Professional shall review the schedule and provide the Construction Manager a written list of corrections needed to approve the schedule. The Construction Manager must make all corrections and resolve all comments within thirty (30) calendar days after its receipt of Owner's and Design Professional's comments. If the schedule is not approved within said thirty (30) calendar days, the Owner and Design Professional will withhold all Contract payments until the schedule is approved. The acceptance of the schedule by the Owner and Design Professional in no way attests to the validity of the assumptions, logic constraints, dependency relationships, resource allocations, manpower and equipment, and any other aspect of the proposed schedule. The Construction Manager is and shall remain solely responsible for the planning and execution of all Work in order to meet Project milestones or Contract completion dates.
- 2.3.2. Construction Schedule: The Construction Manager shall prepare and submit to the Owner and Design Professional, for their review and approval, a Construction Schedule. This schedule shall conform to the format outlined in Paragraph 3.4 below. The approved Construction Schedule shall be attached to the GMP Amendment. The Construction Schedule shall be integrated into the Master Project Schedule.
- 2.3.2.1. Following development and approval of the Construction Schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the Construction Schedule which shall be submitted to the Owner in duplicate. No additional compensation will be due the Construction Manager for making such updates. Failure of the Construction Manager to update, revise, and submit the Construction Schedule as aforesaid shall be sufficient grounds for the Owner to find the Construction Manager in substantial default hereunder and that sufficient cause exists to terminate the Contract or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Owner is submitted.
- 2.3.3. The Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:
- 2.3.3.1. Pre-Bid Schedules (Subnetworks): The Construction Manager shall prepare a construction schedule for that portion of the Work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for subcontract completion by the successful bidder. It shall show the interrelationships between the Work of the successful bidder and that of other subcontractors, and shall establish milestones keyed to the Master Project Schedule.

- 2.3.3.2. Subcontractor Construction Schedules (Subnetworks): Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the bid packages, taking into account the Work schedule of the other subcontractors. The subcontractor's 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 subcontractor's construction schedule also shall show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.
- 2.3.3.3. Occupancy Schedule: The Construction Manager shall jointly develop with the Design Professional and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy and shall be integrated into the Master Project Schedule.
- 2.3.4. Schedule Format: The Master Project Schedule and the Construction Schedule shall be planned and recorded with a Critical Path Method (CPM) schedule in the form of an activity-on-node diagram. All activity-on-node diagrams shall include the Activity Identification, Activity Description, and the type of relationship between activities, including any lead or lag time, as well as being cost loaded. Further, both the Master Project Schedule and the Construction Schedule shall incorporate and be based upon the Project milestone dates set forth in Exhibit I to the Contract.
- 2.3.4.1. No construction activity shall have duration greater than fifteen (15) work days or less than one (1) work day. If requested by the Owner or Design Professional, the Construction Manager shall furnish any information needed to justify the reasonableness of activity durations. Such information shall include, but not be limited to, estimated activity manpower, anticipated quantities, and production rates.
- 2.3.4.2. Procurement shall be identified with at least two (2) activities: fabrication and delivery. Construction Manager shall insure that all Work activities that require a submittal are preceded by the appropriate submittal and approval activities.
- 2.3.4.3. Activities shall be identified by codes to reflect the responsible party for the accomplishment of each activity (only one party per activity), the Phase/Stage of the Project for each activity, and the Area/Location of each activity.
- 2.3.4.4. The construction time for the Work, or any milestone, shall not exceed the specified Contract Time. Logic or activity durations shall be revised in the event that any milestone or Contract completion date is exceeded in the schedule.
- 2.3.4.5. Float is defined as the amount of time between when an activity "can start" (the early start) and when an activity "must start" (the late start). It is understood by the Owner and the Construction Manager that float is a shared commodity, not for the exclusive use or financial benefit of either party. Either party has the full use of the float until it is depleted.
- 2.3.4.6. The CPM schedules must be compatible with Primavera P6. It is the

Construction Manager's responsibility to ascertain the software compatibility with the Owner or Design Professional.

- 2.3.4.7. Initial Schedule Submittal Requirements:
- 2.3.4.7.1. Predecessor/Successor Sort
  - 2.3.4.7.2. Total Float/Early Start Sort
  - 2.3.4.7.3. Responsibility/Early Start Sort
  - 2.3.4.7.4. Area/Early Start Sort
  - 2.3.4.7.5. Logic Diagram: Produce diagram with not more than 100 activities per ANSI D (24-inch x 36-inch) size sheet. Insure each sheet includes title, match data or diagram correlation, and key to identify all components used in the diagram.
  - 2.3.4.7.6. Narrative discussing general approach to completion of the Work.
  - 2.3.4.7.7. Electronic in pdf format.
- 2.3.4.8. Schedule Update Requirements: The Construction Manager shall update the schedules monthly to show actual, current progress. The schedule updates shall be submitted within seven (7) calendar days of the data dates. The updates shall include:
- 2.3.4.8.1. Dates of activities' actual starts and completions.
  - 2.3.4.8.2. Percent of Work remaining for activities started but not completed as of the update date.
  - 2.3.4.8.3. Narrative report including a listing of monthly progress, the activities that define the critical path and any changes to the path of critical activities from the previous update, sources of delay, any potential problems, requested logic changes, and Work planned for the next month.
  - 2.3.4.8.4. Total Float/Early Start Sort
  - 2.3.4.8.5. Fragnet of logic diagram for all requested logic changes.
  - 2.3.4.8.6. Updated logic diagram as required by the Owner. At a minimum, the Owner shall require a final logic diagram at the end of the Work showing the planned and actual starts and completions.
  - 2.3.4.8.7. A bar chart comparison of the updated schedule to the initial schedule. This diagram shall show actual and planned performance dates for all completed activities.
  - 2.3.4.8.8. All update information shall be an accurate representation of the actual Work progress.
- 2.3.5. Recovery Schedule: If the initial schedule or any current updates fail to reflect the Work's actual plan or method of operation, or a contractual milestone date is more than fifteen (15) days behind, the Owner may require that a recovery schedule for completion of the remaining Work be submitted. The Recovery Schedule must be submitted within seven (7) calendar days of the Owner's request. The Recovery Schedule shall describe in detail the Construction Manager's plan to complete the remaining Work by the required Contract milestone date. The Recovery Schedule submitted shall meet the same requirements as the original Construction Schedule. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Contract milestone dates.
- 2.3.6. Change Orders: When a Change Order is proposed, the Construction Manager must identify all logic changes as a result of the Change Order. The Construction Manager



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

- 2.4. Cost Control Subsystem: The operation of this subsystem shall provide sufficient timely cost data and detail to permit the Construction Manager to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that the Work will be completed at a cost which, together with the Construction Management Fee, will not exceed the GMP. Requirements of this subsystem include submissions at the following phases of the Project:
- 2.4.1. Pre-Construction Phase Estimates; and
  - 2.4.2. At establishment of the GMP.
- 2.5. Project Accounting Subsystem: This subsystem shall enable the Construction Manager to plan effectively and the Owner to monitor and control the funds available for the Project, cash flow, costs, Change Orders, Construction Change Directives, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable, and also enable the Owner to stay informed as to the overall Project status. All reports to be generated as part of this subsystem shall be consistent with the Project Funding Schedule (if any). This subsystem will be produced and updated monthly and includes the following reports:
- 2.5.1. Costs Status Report representing the budget, estimate, and base commitment (awarded subcontracts and purchase orders) for any given subcontract or budget line item. It shall show approved Change Orders and Construction Change Directive for each subcontract which when added to the base commitment will become the total commitment. Pending Change Orders also will be shown to produce the total estimated probable cost to complete the Work.
  - 2.5.2. A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
  - 2.5.3. A Detailed Status Report showing the complete activity history of each item in the Project accounting structure and includes an earned value graph. It shall include the budget, estimate, and base commitment figures for each subcontract. It shall give the Change Order history, including Change Order numbers, description, proposed and approved dollar amounts. It also shall show all pending or rejected Change Orders.
  - 2.5.4. A Cash Flow Diagram showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
  - 2.5.5. A Job Ledger shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

**EXHIBIT C: PAYMENT BOND FORM**

**CONTRACTOR (PRINCIPAL)**

COMPANY (LEGAL NAME):  
PRINCIPAL BUSINESS ADDRESS (No PO Box):  
TELEPHONE NUMBER:

**SURETY**

COMPANY (LEGAL NAME):  
PRINCIPAL BUSINESS ADDRESS (No PO Box):  
TELEPHONE NUMBER:

**OWNER (OBLIGEE)**

NAME: Alachua County Board of County Commissioners  
PRINCIPAL BUSINESS ADDRESS: 12 S.E. First Street, Gainesville, Florida 32601  
TELEPHONE NUMBER: 352-374-5204

**CONTRACT DETAILS (Identify the specific location on each bond)**

DATE EXECUTED:  
AMOUNT:  
GENERAL DESCRIPTION:  
STREET ADDRESS OF PROJECT:  
PO NO., RFP, OR BID NO.:

**BOND**

BOND NUMBER:  
DATE:  
AMOUNT:

**KNOW ALL MEN BY THESE PRESENTS:**

That Principal, hereinafter called Contractor, and Surety, as identified above, are bound to Alachua County, Florida, as Obligee, and hereinafter called the County, in the amount identified above, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

This payment bond is executed pursuant to §255.05, Florida Statutes, and claimants must comply with the notice and time limitations of §255.05(2) and §255.05(10), Florida Statutes.

WHEREAS, Contractor has by written Contract entered into a Contract, identified above, with Alachua County, which Contract Documents are by reference made part hereof, and for the purposes of this Bond are hereafter referred to as the "Contract."

THE CONDITION OF THIS BOND is that if Contractor promptly makes payments to all persons defined in §713.01, Florida Statutes, who furnish labor, materials and supplies used

directly or indirectly by Contractor in the performance of the Contract; then CONTRACTOR'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT.

The surety hereby waives notice of and agrees that any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect surety's obligation under this bond.

The provisions of this bond are subject to the notice and time limitations of §255.05(2) and §255.05(10). In no event will the Surety be liable in the aggregate to claimants for more than the penal sum of this Payment Bond, regardless of the number of suits that may be filed by claimants.

**SIGNATURES NEXT PAGE**

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CONTRACTOR (PRINCIPAL)**

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

Witnesses as to Contractor  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

Personally Known OR Produced Identification  
Type of Identification Produced: \_\_\_\_\_

**SURETY**  
SIGNATURE:

\_\_\_\_\_

SEAL

PRINTED NAME AND TITLE: ATTORNEY IN FACT

**EXHIBIT D: PERFORMANCE BOND FORM**

**CONTRACTOR (PRINCIPAL)**

COMPANY (LEGAL NAME):  
PRINCIPAL BUSINESS ADDRESS (No PO Box):  
TELEPHONE NUMBER:

**SURETY**

COMPANY (LEGAL NAME):  
PRINCIPAL BUSINESS ADDRESS (No PO Box):  
TELEPHONE NUMBER:

**OWNER (OBLIGEE)**

NAME: Alachua County Board of County Commissioners  
PRINCIPAL BUSINESS ADDRESS: 12 S.E. First Street, Gainesville, Florida 32601  
TELEPHONE NUMBER: 352-374-5204

**CONTRACT DETAILS(Identify the specific location on each bond)**

DATE EXECUTED:  
AMOUNT:  
GENERAL DESCRIPTION:  
STREET ADDRESS OF PROJECT:  
PO NO., RFP, OR BID NO.:

**BOND**

BOND NUMBER:  
DATE:  
AMOUNT:

**KNOW ALL MEN BY THESE PRESENTS:**

That Principal, hereinafter called Contractor, and Surety, as identified above, are bound to Alachua County, Florida, as Obligee, and hereinafter called the County, in the amount identified above, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written Contract entered into a Contract, identified above, with County, which Contract Documents are by reference made a part hereof, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

1. performs the Contract between Contractor and County, at the times and in the manner prescribed in the Contract; and
2. pays County all losses, damages, including liquidated damages and damages caused by delay, expenses, costs and attorney's fees including appellate proceedings, that County sustains as a result of default by Contractor under the Contract; and

3. performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.

Whenever Contractor shall be, and is declared by County to be, in default under the Contract, and County having performed County's obligations there under, the Surety may promptly remedy the default, or shall promptly:

1. complete the Contract in accordance with its terms and conditions; or
2. obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if County elects, upon determination by County and Surety jointly of the lowest responsible bidder, arrange for a Contract between such Bidder and County, and make available as work progresses sufficient funds, paid to County, to pay the cost of completion and other costs and damages for which the Surety may be liable hereunder.

No right of action shall accrue on this bond to or for the use of any person of corporation other than County named herein.

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

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

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

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CONTRACTOR (PRINCIPAL)**

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
By: \_\_\_\_\_

Witnesses as to Contractor Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

Personally Known OR Produced Identification  
Type of Identification Produced: \_\_\_\_\_

**SURETY**

SIGNATURE:

\_\_\_\_\_

SEAL

PRINTED NAME AND TITLE:

\_\_\_\_\_

**EXHIBIT E: INSURANCE REQUIREMENTS**

**TYPE “A” INSURANCE REQUIREMENTS  
“ARTISAN CONTRACTORS / SERVICE CONTACTS”**

**The Contractor shall procure and maintain for the duration of this contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the contractor/vendor, his agents, representatives, employees or subcontractors.**

**COMMERCIAL GENERAL LIABILITY**

Coverage must be afforded under a per occurrence form policy for limits not less than \$1,000,000 General Aggregate, \$1,000,000 Products / Completed Operations Aggregate, \$1,000,000 Personal and Advertising Injury Liability, \$1,000,000 each Occurrence, \$50,000 Fire Damage Liability and \$5,000 Medical Expense.

**AUTOMOBILE LIABILITY**

Coverage must be afforded including coverage for all Owned vehicles, Hired and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$1,000,000 combined single limit each accident.

**WORKERS COMPENSATION AND EMPLOYER’S LIABILITY**

Coverage to apply for all employees at STATUTORY Limits in compliance with applicable state and federal laws; if any operations are to be undertaken on or about navigable waters, coverage must be included for the USA Longshoremen & Harbor Workers Act.

Employer’s Liability limits for not less than \$100,000 each accident; \$500,000 disease policy limit and \$100,000 disease each employee must be included.

**BUILDER’S RISK / INSTALLATION FLOATERS**

The Construction manager shall provide insurance coverage that covers all tools and equipment utilized for the duration of the project.

**EMPLOYEE FIDELITY COVERAGE ( only applicable to vendors whose employees handle funds )**

Employee Dishonesty coverage must be afforded for not less than \$500,000 Blanket all employees ISO Form

**OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

**I Commercial General Liability and Automobile Liability Coverages**

a. The Alachua County Board of County Commissioners, its officials, employees and volunteers are to be covered as an Additional Insured as respects: Liability arising out of activities performed by or on behalf of the Contractor/Vendor; to include Products and/or Completed Operations of the Contractor/Vendor; Automobiles owned, leased, hired or borrowed by the

Contractor.

b. The Contractor's insurance coverage shall be considered primary insurance as respects the County, its officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officials, employees or volunteers shall be excess of Contractor/Vendor's insurance and shall be non-contributory.

## **II All Coverages**

The Contractor/Vendor shall provide a Certificate of Insurance to the County with a thirty (30) day notice of cancellation. The certificate shall indicate if cover is provided under a "claims made" or "per occurrence" form. If any cover is provided under claims made form the certificate will show a retroactive date, which should be the same date of the contract (original if contact is renewed) or prior.

## **SUBCONTRACTORS**

The Contractor/Vendor shall be responsible for all subcontractors working on their behalf as a condition of this Agreement. All subcontractors of the Contractor/Vendor shall be subject to the same coverage requirements (but not limits) stated herein.

**CERTIFICATE HOLDER:                    Alachua County Board of County Commissioners**

**MAIL, EMAIL or FAX CERTIFICATES**



**EXHIBIT E-1 –CERTIFICATE OF INSURANCE**

**EXHIBIT F: BOND WAIVERS AND PAYMENT APPLICATION AFFIDAVIT**

**WAIVER OF RIGHT AGAINST PAYMENT BOND (PROGRESS PAYMENT)**

**OWNER:** Alachua County, a charter county and political subdivision of the State of Florida

**CONTRACTOR:** D E SCORPIO CORPORATION

**PROJECT NUMBER & TITLE:** ; #13356 Construction Manager (CM) at Risk with DE Scorpio  
**(Identify the specific location of the Project and the Bond Number)**

The undersigned Claimant, for itself and its successors and assigns, and in consideration of the progress payment made in the amount of \$ \_\_\_\_\_, hereby waives and releases its right to claim against the payment bond, and further waives, releases and discharges the Owner and Contractor from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, for labor, services or materials furnished through \_\_\_\_\_ (insert date) to \_\_\_\_\_ on the job of **Alachua County**, a charter county and political subdivision of the State of Florida, for improvements to the following described Project: #13356 Construction Manager (CM) at Risk with DE Scorpio; #13356 Construction Manager (CM) at Risk with DE Scorpio for the construction of Alachua County Fire Rescue Stations; Project No. **(Identify the specific location of the Project)**

**Claimant:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**By:** \_\_\_\_\_

(Print Name)

**Its:** \_\_\_\_\_

(Print Title)

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

Personally Known OR Produced Identification  
Type of Identification Produced: \_\_\_\_\_

**WAIVER OF RIGHT AGAINST PAYMENT BOND  
(FINAL PAYMENT)**

**OWNER:** Alachua County, a charter county and political subdivision of the State of Florida

**CONTRACTOR:** D E SCORPIO CORPORATION

**PROJECT NUMBER & TITLE:** ; #13356 Construction Manager (CM) at Risk with DE Scorpio  
**(Identify the specific location of the Project and the Bond Number)**

The undersigned Claimant, for itself and its successors and assigns, and in consideration of final payment made in the amount of \$ \_\_\_\_\_, hereby waives and releases its right to claim against the payment bond, and further waives, releases and discharges the Owner and Contractor from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, for labor, services or materials furnished to \_\_\_\_\_ on the job of **Alachua County**, a charter county and political subdivision of the State of Florida, for improvements to the following described Project: #13356 Construction Manager (CM) at Risk with DE Scorpio; #13356 Construction Manager (CM) at Risk with DE Scorpio for the construction of Alachua County Fire Rescue Stations; Project No. **(Identify the specific location of the Project)**

**Claimant:** \_\_\_\_\_

DATE: \_\_\_\_\_

By: \_\_\_\_\_

(Print Name)

Its: \_\_\_\_\_

(Print Title)

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

Personally Known OR Produced Identification  
Type of Identification Produced: \_\_\_\_\_

RELEASE AND AFFIDAVIT

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

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

(1) In accordance with the Contract Documents and in consideration of \$\_\_\_\_\_ paid, \_\_\_\_\_ (“Construction Manager”) releases and waives for itself and its subcontractors, materialmen, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against Alachua County, a charter county and political subdivision of the State of Florida (“Owner”) relating in any way to the performance of the Contract between Construction Manager and Owner, dated \_\_\_\_\_, 20\_\_\_\_, for the period from \_\_\_\_\_ to \_\_\_\_\_.

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

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

(4) Construction Manager certifies that it has paid all its subcontractors and materialmen in full all amounts owed them from any previous payments received by Construction Manager from Owner and has not withheld any such amounts. In the event Construction Manager withholds any unpaid amounts due to its subcontractors and/or materialmen from the payment it receives from Owner with respect to the Application for Payment referenced in paragraph 5 below, Construction Manager agrees to immediately refund all such unpaid amounts to Owner.

(5) This Release and Affidavit is given for the purpose of obtaining payment from Owner of Construction Manager’s [monthly/final] Application for Payment No. \_\_\_\_\_ in the amount of \$\_\_\_\_\_.

**Construction Manager:**

By: \_\_\_\_\_

Its: \_\_\_\_\_ President

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

\_\_\_\_\_  
\_\_\_\_\_

Witnesses

[Corporate Seal]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced: \_\_\_\_\_

**EXHIBIT G: CONSTRUCTION MANAGER APPLICATION FOR PAYMENT**

Construction Manager (Name and Address): \_\_\_\_\_  
 Request No: \_\_\_\_\_  
Architect-Engineer Job No: \_\_\_\_\_  
 For Period Ending: \_\_\_\_\_  
Contract Time (Calendar Days): \_\_\_\_\_  
 Project Name: **(Identify the specific location of the Project)** \_\_\_\_\_  
Time Elapsed to Date: \_\_\_\_\_  
 State Project: \_\_\_\_\_  
 Federal Project No: \_\_\_\_\_

	<u>ADDITIONS \$</u>	<u>DEDUCTIONS \$</u>
Change Orders approved in previous months by Owner -- TOTAL	_____	_____
Subsequent Change Orders	_____	_____
Number Approved (Date)	_____	_____
TOTALS	_____	_____
Net change by Change Orders \$	_____	THIS CERTIFICATE \$ _____

SHOW INDIVIDUAL SBE PAYMENTS SEPARATELY ON \_\_\_\_\_  
 SCHEDULE OF VALUES AND TOTAL ON THIS LINE \_\_\_\_\_  
 TOTAL AMOUNT PAID THIS CERTIFICATE \_\_\_\_\_  
 TO SBE SUBCONTRACTORS \$ \_\_\_\_\_

**CERTIFICATION BY THE CONSTRUCTION MANAGER:** According to the best of my knowledge and belief, I certify that all items and amounts shown on the face of this Application are correct, that all work has been performed and material supplied in full accordance with the terms and conditions of the Contract, and that all materialmen, laborers and subcontractors, as defined in Chapter 713.01, Florida Statutes, have been paid the amounts due them out of any previous payments made to the Construction Manager by the Owner. Further, I agree to promptly pay each materialman, laborer and subcontractor, as defined in Chapter 713.01, Florida Statutes, upon receipt of payment from the Owner, out of the amount paid to me on, account of such materialman's laborer's or subcontractor's work, the amount to which said materialman, laborer and subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to myself on account of such materialman's, laborer's and subcontractor's work.

CONSTRUCTION MANAGER: \_\_\_\_\_ By: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced (type of identification) as identification.

(Signature of person taking acknowledgement)

(Name typed printed or stamped)

(Title or Vendor)

(Serial number, if any)

CERTIFICATION BY THE ARCHITECT-ENGINEER: I certify that I have checked and verified this Progress Payment Application; that to the best of my knowledge and belief, the above application is a true statement of the value of the work performed and the materials suitable stored on the site; that all work and materials included in this Certificate have been inspected by me or by my authorized assistants; that all work has been performed and material supplied in full accordance with the terms of this Contract; and I approved for payment the amount noted above.

REVIEWED AND RECOMMENDED FOR PAYMENT:

\_\_\_\_\_

Architect-Engineer

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

APPROVED FOR SERVICES, PERFORMED AS STATED BY:

\_\_\_\_\_

Owner's Owner's Representative

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

**EXHIBIT H: CONSTRUCTION MANAGER AT RISK CHANGE ORDER**

CHANGE ORDER NO. \_\_\_\_\_

CONTRACT NO. 133546

CONTRACTOR: D E SCORPIO CORPORATION

EFFECTIVE DATE:

PROJECT TITLE & DESCRIPTION: #13356 Construction Manager (CM) at Risk with DE Scorpio; #13356 Construction Manager (CM) at Risk with DE Scorpio for the construction of Alachua County Fire Rescue Stations

PROJECT NO. (Identify the specific location on CO)

Under our CONTRACT dated \_\_\_\_\_, 20\_\_.

\*\*\*\*\*

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

For the Additive (Deductive) Sum of: (\$ \_\_\_\_\_). [Add or (Deduct)] From: the Contract Amount

Preconstruction Services Amount	\$ _____
GMP Amount	\$ _____
Total Contract Amount:	\$ _____
Sum of Previous Changes to Contract Amount	\$ _____
This Change Order [Add or (Deduct)]	\$ _____
New Total	\$ _____

The time for completion shall be (increased/decreased) by \_\_\_\_\_ calendar days due to this Change Order. Accordingly, the Contract Time is now \_\_\_\_\_ (\_\_\_\_\_) calendar days and the Substantial Completion date is \_\_\_\_\_.

Your acceptance of this Change Order shall constitute a modification to our Contract and will be performed subject to all the same terms and conditions as contained in our Contract indicated above, as fully as if the same were repeated in this acceptance. The adjustment, if any, to the Contract shall constitute a full and final settlement of any and all claims arising out of or related to the change set forth herein, including claims for impact and delay costs. This change Order is not valid until approved by the Owner.

**CONSTRUCTION MANAGER:**

By: \_\_\_\_\_

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

**ARCHITECT/ENGINEER:**

By: \_\_\_\_\_

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

**FACILITIES MANAGEMENT**



By: \_\_\_\_\_

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

**ALACHUA BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_

\_\_\_\_\_  
Name and Title

Accepted: \_\_\_\_\_, 20\_\_\_\_

Approved as to Form

\_\_\_\_\_  
Alachua County Attorney

**IF SIGNED BY BOARD**

Attest

\_\_\_\_\_  
J. K. "Jess" Irby, Esq., Clerk (seal)

## **EXHIBIT I: MASTER PROJECT SCHEDULE MILESTONES**

**EXHIBIT J**

**CONSTRUCTION MANAGER’S STAFFING SCHEDULE**

I. Pre-Construction Phase Services:

NAME		TITLE/POSITION		COMPANY AFFILIATION	% ASSIGNED TO PROJECT

II Construction Phase Services:

NAME		TITLE/POSITION		COMPANY AFFILIATION	% ASSIGNED TO PROJECT

**EXHIBIT K**

**GMP AMENDMENT TO CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR CONSTRUCTION OF {---CONTRACT TITLE; CONTRACT NUMBER 133546**

Pursuant to Sections 4.3 and 8 of the Contract, dated \_\_\_\_\_, between The County Commissioners of Alachua County, Florida (“Owner”) and DE Scorpio Corporation (“Construction Manager”), with respect to the construction of the Owner’s proposed fire station located at 10404 SW 24th Avenue, Gainesville, FL (“Location #1”), the Owner and Construction Manager hereby agree to amend and modify the Contract by this Amendment and establish a Guaranteed Maximum Price and Contract Time for all the Work as set forth below:

**ARTICLE 1**

In accordance with Section 2 of Contract, Scope of Work, this Amendment and the other Contract Documents listed as Attachments 1 through \_\_\_ below, which are hereby incorporated into and made a part of the Amendment by this reference:

<u>Attachment No.</u>	<u>Description</u>	<u>Pages</u>	<u>Date</u>
1.	List of Drawings and Specifications	___ through ___	_____
2.	Allowance	___ through ___	_____
3.	Assumptions and Clarifications	___ through ___	_____
4.	Completion Schedule	___ through ___	_____
5.	Schedule of Value	___ through ___	_____
6.	List of Itemized General Conditions	___ through ___	_____
7.	List of Subcontractors and Major Suppliers	___ through ___	_____

**ARTICLE 2**

**GUARANTEED MAXIMUM PRICE**

2.1 Construction Manager’s Guaranteed Maximum Price (“GMP”) for Location #1, located at 10404 SW 24th Avenue, Gainesville, FL , including the estimated Cost of the Work as defined in Section 5 of the Contract including Construction Manager’s Fee as defined in Section 4 of the Contract, is \$ \_\_\_\_\_.

2.2 The GMP includes material that may be purchased directly by the Owner (“Owner Direct Purchases”). The estimated value of materials that may be purchased directly by the Owner is \_\_\_\_\_ (\$ \_\_\_\_\_). Construction Manager will initially process one (1) deductive Change Order under this Contract for the entire estimated amount of Owner Direct Purchases, inclusive of sales taxes. Prior to final payment, a final reconciliation of the Owner Direct Purchases against the GMP will be performed and such deductive Change Order will be prepared for the Owner’s review and execution.

2.3 Construction Manager’s Fee

2.3.1 The Construction Manager’s Fee for Location #1, is hereby established as a lump sum of Two Hundred Forty Thousand Dollars (\$240,000.00)

2.3.2 The lump sum amount shall be included in the GMPs for the referenced Fire Station, and is not to be construed as an additional amount to the amount listed in the

respective GMPs, but rather is a reiteration of the same amount.

2.4 The General Condition expenses for the entire Work on this Project are hereby established as a not to exceed sum amount of \_\_\_\_\_ (\$ \_\_\_\_\_), said not to exceed sum amount is included within the above noted GMP. The items included as General Condition expenses are listed in the List of Itemized General Conditions attached hereto and incorporated herein as Attachment No. 3. This itemized list shall be based upon the following categories of the Cost of Work as listed in sections: 5.1.1.1-5.1.1.3, 5.1.4, 5.1.5.3, and 5.1.5.8 of the Agreement. Except as said not to exceed sum amount for General Condition expenses may be expressly adjusted by Change Order or Construction Change Directive, Contractor acknowledges and agrees that Owner shall have no liability for any General Condition expenses beyond payment of the above noted not to exceed sum amount and Contractor agrees that it shall not be entitled to receive any additional compensation from Owner for the General Conditions beyond the above not to exceed sum amount. Contractor acknowledges and agrees that unspent General Condition's items shall be returned to the Owner through a deductive change order.

2.5 The Contractor's bond costs for the entire Work on this Project shall be a not to exceed sum amount of \_\_\_\_\_ (\$ \_\_\_\_\_) said not to exceed sum amount is included within the above noted GMP.

2.6 Monthly installment payment of the Contractor's Fee shall be based upon the percent actual completion of the designated portion of the Work for each particular month as evidenced by actual costs submitted. The General Condition expenses shall be based upon actual costs as indicated by the supplied back up documents.

2.7 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the required Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the not to exceed sum General Condition expense amount noted in paragraph 2.3 above, the Parties have agreed to establish a contingency within the GMP in an amount not-to-exceed amount of \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_). Contingency funds shall be used to cover costs that may result from incomplete design and unanticipated costs that arise during construction that are not identified by the Construction Documents and other Owner requested changes in the Work. The Contractor shall not be entitled to overhead and profit or other fee's for Work charged against this Contingency. Contractor shall not proceed with any portion of the Work which it intends to charge against this contingency without first obtaining Owner's expressed written authorization to proceed. Contractor acknowledges and agrees that any Work which is to be charged against the contingency allowance that does not receive such prior written approval from the Owner shall be deemed to be part of Contractor's basic Work compensated within the GMP and not chargeable against the contingency. The Contractor shall keep a log of all items charged against the Contingency on the form attached as **Exhibit P** to this Agreement and shall utilize the Owner's "Contingency Authorization Form" attached to this Agreement as **Exhibit O** for all contingency related reimbursements. The Owner reserves the right, at its sole discretion, to withhold its consent on contingency expenditures. Further, any contingency expenditure become part of the Contract Documents and are incorporated by reference herein. Unused contingency remaining at the end of the Work will be credited from the GMP. Contractor has no entitlement to any portion of any unused contingency.

2.8 The Parties have agreed to establish an allowance within the GMP for \_\_\_\_\_ in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_). Construction Manager shall not proceed with any portion of the Work associated with the aforesaid allowance ("Allowance Work") without first obtaining Owner's express written authorization to proceed with said Allowance Work. Allowance Amounts are reflected in Attachments \_\_\_\_\_ through \_\_\_\_\_. Contractor acknowledges and agrees that any Work which is to be charged against the allowance that does not receive such prior written approval from the Owner shall be deemed to be part of Contractor's basic Work compensated within the GMP and not chargeable against the allowance. The Contractor shall keep a log of all items charged against the Allowance and shall utilize the Owner's "Allowance Authorization Form" for all allowance related reimbursements. The Owner reserves the right, at its sole discretion, to withhold its consent on allowance expenditures. Further, any allowance expenditures become part of the Contract Documents and are incorporated by reference herein. Unused allowance amounts remaining at the end of the Work will be credited from the GMP. Contractor has no entitlement to any portion of any unused allowance.

2.9 Pursuant to Exhibit A, Paragraph 12.4 of the Agreement, if at the time final payment is made to Contractor the total Cost of the Work has been increased by approved Change Orders and Construction Change Directives, excepting change orders for Owner Direct Purchases, in an amount causing the original GMP as set forth in this Amendment to be increased or reduced by more than \$ \_\_\_\_\_, then the Construction Manager's Fee shall be correspondingly increased or decreased by \$ \_\_\_\_\_.

2.10 If project requires trench excavation in excess of five feet deep the Construction Manager acknowledges the requirements set forth in Section 553.63 of the Florida Statutes titled Trench Safety Act. Construction Manager certifies that the required trench safety standards will be in effect during the period of construction of the Project and Construction Manager agrees to comply with all such required trench safety standards. The cost of such compliances is included in the GMP

2.11 Construction Manager is responsible, without reimbursement from Owner, for re-inspection fees and costs; to the extent such re-inspections are due to the fault or neglect of Construction Manager.

### **ARTICLE 3**

#### **CONTRACT TIME AND DAMAGES**

3.1 The Construction Phase Commencement Date for the Work is \_\_\_\_\_. The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the Work is {---Written Substantial Completion Day---} () days ("Contract Time"). THE SUBSTANTIAL COMPLETION DATE IS THEREFORE ESTABLISHED AS \_\_\_\_\_. The Final Completion date is established no longer than 30 working days from the date the County delivers the final List to the Contractor as provided in section 4.6 of Exhibit A to this Agreement, unless extended in accordance with §218.735(7)(c), Florida Statutes.

3.2 Pursuant to the Amendment, the Parties have established a liquidated damage rate for reasons stated therein, which the Parties acknowledge and agree apply to this Amendment and Contractor's responsibility to complete the Work within the Contract Time as stated herein. Accordingly, the liquidated damage rate established in the Agreement shall be assessed against

Contractor for each calendar day Contractor fails to achieve Substantial Completion and/or Final Completion of the Work within the Contract Time.

**ARTICLE 4**

**MISCELLANEOUS**

4.1 Except as expressly modified herein, the terms and conditions of the Contract remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Contract, Owner and Construction Manager agree that the terms of this Amendment shall prevail and control.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

OWNER

Construction Manager

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

Attest:

Attest: \_\_\_\_\_

\_\_\_\_\_  
J. K. "Jess" Irby, Esq., Clerk  
(SEAL)

By/Title \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
Alachua County Attorney



**Attachment 1:**

**List of Drawings, Specifications, and Addendums**

See Attached

**Attachment 2**  
**Schedule of Values**

See Attached

**Attachment 3**

**Itemized General Condition Expenses**

See Attached

**Attachment 4**

**List of Alternates**

**Attachment 5**

**Assumptions and Clarifications**

See Attached

**Attachment 6**

**COMPLETION SCHEDULE**

See Attached

**Attachment 7**

**LIST OF SUB-CONTRACTORS AND MAJOR SUPPLIERS**

See Attached

**EXHIBIT K2**

**GMP AMENDMENT TO CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR CONSTRUCTION OF {---CONTRACT TITLE; CONTRACT NUMBER 133546**

Pursuant to Sections 4.3 and 8 of the Contract, dated \_\_\_\_\_, between The County Commissioners of Alachua County, Florida (“Owner”) and DE Scorpio Corporation (“Construction Manager”), with respect to the construction of the Owner’s proposed fire station located at 12825 NW US Highway 441, Alachua, FL (“Location #2 ”), the Owner and Construction Manager hereby agree to amend and modify the Contract by this Amendment and establish a Guaranteed Maximum Price and Contract Time for all the Work as set forth below:

**ARTICLE 1**

In accordance with Section 2 of Contract, Scope of Work, this Amendment and the other Contract Documents listed as Attachments 1 through \_\_\_ below, which are hereby incorporated into and made a part of the Amendment by this reference:

<u>Attachment No.</u>	<u>Description</u>	<u>Pages</u>	<u>Date</u>
1.	List of Drawings and Specifications	___ through ___	_____
2.	Allowance	___ through ___	_____
3.	Assumptions and Clarifications	___ through ___	_____
4.	Completion Schedule	___ through ___	_____
5.	Schedule of Value	___ through ___	_____
6.	List of Itemized General Conditions	___ through ___	_____
7.	List of Subcontractors and Major Suppliers	___ through ___	_____

**ARTICLE 2**

**GUARANTEED MAXIMUM PRICE**

2.1 Construction Manager’s Guaranteed Maximum Price (“GMP”) for Location #2 located at 12825 NW US Highway 441, Alachua, FL, including the estimated Cost of the Work as defined in Section 5 of the Contract including Construction Manager’s Fee as defined in Section 4 of the Contract, is (\$).

2.2 The GMP includes material that may be purchased directly by the Owner (“Owner Direct Purchases”). The estimated value of materials that may be purchased directly by the Owner is \_\_\_\_\_ (\$\_\_\_\_\_). Construction Manager will initially process one (1) deductive Change Order under this Contract for the entire estimated amount of Owner Direct Purchases, inclusive of sales taxes. Prior to final payment, a final reconciliation of the Owner Direct Purchases against the GMP will be performed and such deductive Change Order will be prepared for the Owner’s review and execution.

2.3 Construction Manager’s Fee

2.3.1 The Construction Manager’s Fee for the for Location is hereby established as a lump sum amount of Two Hundred Fifty Thousand Dollars Fifty Thousand Dollars (\$250,000.00).



2.3.2 The said lump sum amounts shall be included in the GMPs for the referenced Fire Stations, and is not to be construed as a additional amount to the amount listed in the respective GMPs, but rather is a reiteration of the same amount.

2.4 The General Condition expenses for the entire Work on this Project are hereby established as a not to exceed sum amount of \_\_\_\_\_ (\$ \_\_\_\_\_), said not to exceed sum amount is included within the above noted GMP. The items included as General Condition expenses are listed in the List of Itemized General Conditions attached hereto and incorporated herein as Attachment No. \_\_\_\_\_. This itemized list shall be based upon the following categories of the Cost of Work as listed in sections: 5.1.1.1-5.1.1.3, 5.1.4, 5.1.5.3, and 5.1.5.8 of the Agreement Except as said not to exceed sum amount for General Condition expenses may be expressly adjusted by Change Order or Construction Change Directive, Contractor acknowledges and agrees that Owner shall have no liability for any General Condition expenses beyond payment of the above noted not to exceed sum amount and Contractor agrees that it shall not be entitled to receive any additional compensation from Owner for the General Conditions beyond the above not to exceed sum amount. Contractor acknowledges and agrees that unspent General Condition's items shall be returned to the Owner through a deductive change order.

2.5 The Contractor's bond costs for the entire Work on this Project shall be a not to exceed sum amount of \_\_\_\_\_ (\$ \_\_\_\_\_) said not to exceed sum amount is included within the above noted GMP.

2.6 Monthly installment payment of the Contractor's Fee shall be based upon the percent actual completion of the designated portion of the Work for each particular month as evidenced by actual costs submitted. The General Condition expenses shall be based upon actual costs as indicated by the supplied back up documents

2.7 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the required Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the not to exceed sum General Condition expense amount noted in paragraph 2.3 above, the Parties have agreed to establish a contingency within the GMP in an amount not-to-exceed amount of \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_). Contingency funds shall be used to cover costs that may result from incomplete design and unanticipated costs that arise during construction that are not identified by the Construction Documents and other Owner requested changes in the Work. The Contractor shall not be entitled to overhead and profit or other fee's for Work charged against this Contingency. Contractor shall not proceed with any portion of the Work which it intends to charge against this contingency without first obtaining Owner's expressed written authorization to proceed. Contractor acknowledges and agrees that any Work which is to be charged against the contingency allowance that does not receive such prior written approval from the Owner shall be deemed to be part of Contractor's basic Work compensated within the GMP and not chargeable against the contingency. The Contractor shall keep a log of all items charged against the Contingency on the form attached as **Exhibit P** to this Agreement and shall utilize the Owner's "Contingency Authorization Form" attached to this Agreement as **Exhibit O** for all contingency related reimbursements. The Owner reserves the right, at its sole discretion, to withhold its consent on contingency expenditures. Further, any contingency expenditure become part of the Contract Documents and are incorporated by reference herein. Unused contingency remaining at the end

of the Work will be credited from the GMP. Contractor has no entitlement to any portion of any unused contingency.

2.8 The Parties have agreed to establish an allowance within the GMP for \_\_\_\_\_ in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_). Construction Manager shall not proceed with any portion of the Work associated with the aforesaid allowance ("Allowance Work") without first obtaining Owner's express written authorization to proceed with said Allowance Work. Allowance Amounts are reflected in Attachments \_\_\_\_\_ through \_\_\_\_\_. Contractor acknowledges and agrees that any Work which is to be charged against the allowance that does not receive such prior written approval from the Owner shall be deemed to be part of Contractor's basic Work compensated within the GMP and not chargeable against the allowance. The Contractor shall keep a log of all items charged against the Allowance and shall utilize the Owner's "Allowance Authorization Form" for all allowance related reimbursements. The Owner reserves the right, at its sole discretion, to withhold its consent on allowance expenditures. Further, any allowance expenditures become part of the Contract Documents and are incorporated by reference herein. Unused allowance amounts remaining at the end of the Work will be credited from the GMP. Contractor has no entitlement to any portion of any unused allowance.

2.9 Pursuant to Exhibit A, Paragraph 12.4 of the Agreement, if at the time final payment is made to Contractor the total Cost of the Work has been increased by approved Change Orders and Construction Change Directives, excepting change orders for Owner Direct Purchases, in an amount causing the original GMP as set forth in this Amendment to be increased or reduced by more than \$ \_\_\_\_\_, then the Construction Manager's Fee shall be correspondingly increased or decreased by \$ \_\_\_\_\_.

2.10 If project requires trench excavation in excess of five feet deep the Construction Manager acknowledges the requirements set forth in Section 553.63 of the Florida Statutes titled Trench Safety Act. Construction Manager certifies that the required trench safety standards will be in effect during the period of construction of the Project and Construction Manager agrees to comply with all such required trench safety standards. The cost of such compliances is included in the GMP

2.11 Construction Manager is responsible, without reimbursement from Owner, for re-inspection fees and costs; to the extent such re-inspections are due to the fault or neglect of Construction Manager.

### **ARTICLE 3** **CONTRACT TIME AND DAMAGES**

3.1 The Construction Phase Commencement Date for the Work is \_\_\_\_\_. The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the Work is {---Written Substantial Completion Day---} () days ("Contract Time"). THE SUBSTANTIAL COMPLETION DATE IS THEREFORE ESTABLISHED AS \_\_\_\_\_. The Final Completion date is established no longer than 30 working days from the date the County delivers the final List to the Contractor as provided in section 4.6 of Exhibit A to this Agreement, unless extended in accordance with §218.735(7)(c), Florida Statutes.

3.2 Pursuant to the Amendment, the Parties have established a liquidated damage rate for reasons stated therein, which the Parties acknowledge and agree apply to this Amendment and

Contractor's responsibility to complete the Work within the Contract Time as stated herein. Accordingly, the liquidated damage rate established in the Agreement shall be assessed against Contractor for each calendar day Contractor fails to achieve Substantial Completion and/or Final Completion of the Work within the Contract Time.

**ARTICLE 4**

**MISCELLANEOUS**

4.1 Except as expressly modified herein, the terms and conditions of the Contract remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Contract, Owner and Construction Manager agree that the terms of this Amendment shall prevail and control.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

OWNER

Construction Manager

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

Attest:

Attest: \_\_\_\_\_

\_\_\_\_\_  
J. K. "Jess" Irby, Esq., Clerk  
(SEAL)

By/Title \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
Alachua County Attorney

**Attachment 1:**

**List of Drawings, Specifications, and Addendums**

See Attached

**Attachment 2**  
**Schedule of Values**

See Attached

**Attachment 3**

**Itemized General Condition Expenses**

See Attached

**Attachment 4**

**List of Alternates**



**Attachment 5**

**Assumptions and Clarifications**

See Attached

**Attachment 6**

**COMPLETION SCHEDULE**

See Attached

**Attachment 7**

**LIST OF SUB-CONTRACTORS AND MAJOR SUPPLIERS**

See Attached

**EXHIBIT K3**

**GMP AMENDMENT TO CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR CONSTRUCTION OF {---CONTRACT TITLE; CONTRACT NUMBER 133546**

Pursuant to Sections 4.3 and 8 of the Contract, dated \_\_\_\_\_, between The County Commissioners of Alachua County, Florida (“Owner”) and DE Scorpio Corporation (“Construction Manager”), with respect to the construction of the Owner’s proposed fire station located at I-75 at NW US Highway 441, Alachua, FL (“Location #3 ”), the Owner and Construction Manager hereby agree to amend and modify the Contract by this Amendment and establish a Guaranteed Maximum Price and Contract Time for all the Work as set forth below:

**ARTICLE 1**

In accordance with Section 2 of Contract, Scope of Work, this Amendment and the other Contract Documents listed as Attachments 1 through \_\_\_ below, which are hereby incorporated into and made a part of the Amendment by this reference:

<u>Attachment No.</u>	<u>Description</u>	<u>Pages</u>	<u>Date</u>
1.	List of Drawings and Specifications	___ through ___	_____
2.	Allowance	___ through ___	_____
3.	Assumptions and Clarifications	___ through ___	_____
4.	Completion Schedule	___ through ___	_____
5.	Schedule of Value	___ through ___	_____
6.	List of Itemized General Conditions	___ through ___	_____
7.	List of Subcontractors and Major Suppliers	___ through ___	_____

**ARTICLE 2**

**GUARANTEED MAXIMUM PRICE**

2.1 Construction Manager’s Guaranteed Maximum Price (“GMP”) for Location #3 located at I-75 at NW US Highway 441, Alachua, FL , including the estimated Cost of the Work as defined in Section 5 of the Contract including Construction Manager’s Fee as defined in Section 4 of the Contract, is (\$).

2.2 The GMP includes material that may be purchased directly by the Owner (“Owner Direct Purchases”). The estimated value of materials that may be purchased directly by the Owner is \_\_\_\_\_ (\$\_\_\_\_\_). Construction Manager will initially process one (1) deductive Change Order under this Contract for the entire estimated amount of Owner Direct Purchases, inclusive of sales taxes. Prior to final payment, a final reconciliation of the Owner Direct Purchases against the GMP will be performed and such deductive Change Order will be prepared for the Owner’s review and execution.

2.3 Construction Manager’s Fee

2.3.1 The Construction Manager’s Fee for Location #3, is hereby established as a lump sum of \_\_\_\_\_ ()

2.3.2 The said lump sum amounts shall be included in the GMPs for the referenced

Fire Stations, and is not to be construed as an additional amount to the amount listed in the respective GMPs, but rather is a reiteration of the same amount.

2.4 The General Condition expenses for the entire Work on this Project are hereby established as a not to exceed sum amount of \_\_\_\_\_ (\$ \_\_\_\_\_), said not to exceed sum amount is included within the above noted GMP. The items included as General Condition expenses are listed in the List of Itemized General Conditions attached hereto and incorporated herein as Attachment No. \_\_\_\_\_. This itemized list shall be based upon the following categories of the Cost of Work as listed in sections: 5.1.1.1-5.1.1.3, 5.1.4, 5.1.5.3, and 5.1.5.8 of the Agreement. Except as said not to exceed sum amount for General Condition expenses may be expressly adjusted by Change Order or Construction Change Directive, Contractor acknowledges and agrees that Owner shall have no liability for any General Condition expenses beyond payment of the above noted not to exceed sum amount and Contractor agrees that it shall not be entitled to receive any additional compensation from Owner for the General Conditions beyond the above not to exceed sum amount. Contractor acknowledges and agrees that unspent General Condition's items shall be returned to the Owner through a deductive change order.

2.5 The Contractor's bond costs for the entire Work on this Project shall be a not to exceed sum amount of \_\_\_\_\_ (\$ \_\_\_\_\_) said not to exceed sum amount is included within the above noted GMP.

2.6 Monthly installment payment of the Contractor's Fee shall be based upon the percent actual completion of the designated portion of the Work for each particular month as evidenced by actual costs submitted. The General Condition expenses shall be based upon actual costs as indicated by the supplied back up documents

2.7 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the required Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the not to exceed sum General Condition expense amount noted in paragraph 2.3 above, the Parties have agreed to establish a contingency within the GMP in an amount not-to-exceed amount of \_\_\_\_\_ Dollars \_\_\_\_\_

(\$ \_\_\_\_\_). Contingency funds shall be used to cover costs that may result from incomplete design and unanticipated costs that arise during construction that are not identified by the Construction Documents and other Owner requested changes in the Work. The Contractor shall not be entitled to overhead and profit or other fee's for Work charged against this Contingency. Contractor shall not proceed with any portion of the Work which it intends to charge against this contingency without first obtaining Owner's expressed written authorization to proceed. Contractor acknowledges and agrees that any Work which is to be charged against the contingency allowance that does not receive such prior written approval from the Owner shall be deemed to be part of Contractor's basic Work compensated within the GMP and not chargeable against the contingency. The Contractor shall keep a log of all items charged against the Contingency on the form attached as **Exhibit P** to this Agreement and shall utilize the Owner's "Contingency Authorization Form" attached to this Agreement as **Exhibit O** for all contingency related reimbursements. The Owner reserves the right, at its sole discretion, to withhold its consent on contingency expenditures. Further, any contingency expenditure become part of the Contract Documents and are incorporated by reference herein. Unused contingency remaining at the end of the Work will be credited from the GMP. Contractor has no entitlement to any portion of any

unused contingency.

2.8 The Parties have agreed to establish an allowance within the GMP for \_\_\_\_\_ in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_). Construction Manager shall not proceed with any portion of the Work associated with the aforesaid allowance ("Allowance Work") without first obtaining Owner's express written authorization to proceed with said Allowance Work. Allowance Amounts are reflected in Attachments \_\_\_\_\_ through \_\_\_\_\_. Contractor acknowledges and agrees that any Work which is to be charged against the allowance that does not receive such prior written approval from the Owner shall be deemed to be part of Contractor's basic Work compensated within the GMP and not chargeable against the allowance. The Contractor shall keep a log of all items charged against the Allowance and shall utilize the Owner's "Allowance Authorization Form" for all allowance related reimbursements. The Owner reserves the right, at its sole discretion, to withhold its consent on allowance expenditures. Further, any allowance expenditures become part of the Contract Documents and are incorporated by reference herein. Unused allowance amounts remaining at the end of the Work will be credited from the GMP. Contractor has no entitlement to any portion of any unused allowance.

2.9 Pursuant to Exhibit A, Paragraph 12.4 of the Agreement, if at the time final payment is made to Contractor the total Cost of the Work has been increased by approved Change Orders and Construction Change Directives, excepting change orders for Owner Direct Purchases, in an amount causing the original GMP as set forth in this Amendment to be increased or reduced by more than \$ \_\_\_\_\_, then the Construction Manager's Fee shall be correspondingly increased or decreased by \$ \_\_\_\_\_.

2.10 If project requires trench excavation in excess of five feet deep the Construction Manager acknowledges the requirements set forth in Section 553.63 of the Florida Statutes titled Trench Safety Act. Construction Manager certifies that the required trench safety standards will be in effect during the period of construction of the Project and Construction Manager agrees to comply with all such required trench safety standards. The cost of such compliances is included in the GMP

2.11 Construction Manager is responsible, without reimbursement from Owner, for re-inspection fees and costs; to the extent such re-inspections are due to the fault or neglect of Construction Manager.

### **ARTICLE 3**

#### **CONTRACT TIME AND DAMAGES**

3.1 The Construction Phase Commencement Date for the Work is \_\_\_\_\_. The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the Work is {---Written Substantial Completion Day---} () days ("Contract Time"). THE SUBSTANTIAL COMPLETION DATE IS THEREFORE ESTABLISHED AS \_\_\_\_\_. The Final Completion date is established no longer than 30 working days from the date the County delivers the final List to the Contractor as provided in section 4.6 of Exhibit A to this Agreement, unless extended in accordance with §218.735(7)(c), Florida Statutes.

3.2 Pursuant to the Amendment, the Parties have established a liquidated damage rate for reasons stated therein, which the Parties acknowledge and agree apply to this Amendment and Contractor's responsibility to complete the Work within the Contract Time as stated herein.

Accordingly, the liquidated damage rate established in the Agreement shall be assessed against Contractor for each calendar day Contractor fails to achieve Substantial Completion and/or Final Completion of the Work within the Contract Time.

#### **ARTICLE 4**

#### **MISCELLANEOUS**

4.1 Except as expressly modified herein, the terms and conditions of the Contract remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Contract, Owner and Construction Manager agree that the terms of this Amendment shall prevail and control.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

OWNER

Construction Manager

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

Attest:

Attest: \_\_\_\_\_

\_\_\_\_\_  
J. K. "Jess" Irby, Esq., Clerk  
(SEAL)

By/Title \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
Alachua County Attorney



**Attachment 1:**

**List of Drawings, Specifications, and Addendums**

See Attached

**Attachment 2**  
**Schedule of Values**

See Attached

**Attachment 3**

**Itemized General Condition Expenses**

See Attached

**Attachment 4**

**List of Alternates**

**Attachment 5**

**Assumptions and Clarifications**

See Attached

**Attachment 6**

**COMPLETION SCHEDULE**

See Attached

**Attachment 7**

**LIST OF SUB-CONTRACTORS AND MAJOR SUPPLIERS**

See Attached

**EXHIBIT K4****GMP AMENDMENT TO CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR CONSTRUCTION OF {---CONTRACT TITLE; CONTRACT NUMBER 133546**

Pursuant to Sections 4.3 and 8 of the Contract, dated \_\_\_\_\_, between The County Commissioners of Alachua County, Florida (“Owner”) and DE Scorpio Corporation (“Construction Manager”), with respect to the construction of the Owner’s proposed fire station located at Hawthorne Rd (SR 20) at CR 234, Rochelle Community, Unincorporated Alachua County (“Location # 4”), the Owner and Construction Manager hereby agree to amend and modify the Contract by this Amendment and establish a Guaranteed Maximum Price and Contract Time for all the Work as set forth below:

**ARTICLE 1**

In accordance with Section 2 of Contract, Scope of Work, this Amendment and the other Contract Documents listed as Attachments 1 through \_\_\_ below, which are hereby incorporated into and made a part of the Amendment by this reference:

<u>Attachment No.</u>	<u>Description</u>	<u>Pages</u>	<u>Date</u>
1.	List of Drawings and Specifications	___ through ___	_____
2.	Allowance	___ through ___	_____
3.	Assumptions and Clarifications	___ through ___	_____
4.	Completion Schedule	___ through ___	_____
5.	Schedule of Value	___ through ___	_____
6.	List of Itemized General Conditions	___ through ___	_____
7.	List of Subcontractors and Major Suppliers	___ through ___	_____

**ARTICLE 2****GUARANTEED MAXIMUM PRICE**

2.1 Construction Manager’s Guaranteed Maximum Price (“GMP”) for Location #4 located at Hawthorne Rd (SR 20) at CR 234, Rochelle Community, Unincorporated Alachua County, including the estimated Cost of the Work as defined in Section 5 of the Contract including Construction Manager’s Fee as defined in Section 4 of the Contract, is (\$).

2.2 The GMP includes material that may be purchased directly by the Owner (“Owner Direct Purchases”). The estimated value of materials that may be purchased directly by the Owner is \_\_\_\_\_ (\$\_\_\_\_\_). Construction Manager will initially process one (1) deductive Change Order under this Contract for the entire estimated amount of Owner Direct Purchases, inclusive of sales taxes. Prior to final payment, a final reconciliation of the Owner Direct Purchases against the GMP will be performed and such deductive Change Order will be prepared for the Owner’s review and execution.

2.3 Construction Manager’s Fee

2.3.1 The Construction Manager’s Fee for Location #4, is hereby established as a lump sum of \_\_\_\_\_ ()

2.3.3 The said lump sum amounts shall be included in the GMPs for the referenced



Fire Stations, and is not to be construed as an additional amount to the amount listed in the respective GMPs, but rather is a reiteration of the same amount.

2.4 The General Condition expenses for the entire Work on this Project are hereby established as a not to exceed sum amount of \_\_\_\_\_ (\$ \_\_\_\_\_), said not to exceed sum amount is included within the above noted GMP. The items included as General Condition expenses are listed in the List of Itemized General Conditions attached hereto and incorporated herein as Attachment No. \_\_\_\_\_. This itemized list shall be based upon the following categories of the Cost of Work as listed in sections: 5.1.1.1-5.1.1.3, 5.1.4, 5.1.5.3, and 5.1.5.8 of the Agreement. Except as said not to exceed sum amount for General Condition expenses may be expressly adjusted by Change Order or Construction Change Directive, Contractor acknowledges and agrees that Owner shall have no liability for any General Condition expenses beyond payment of the above noted not to exceed sum amount and Contractor agrees that it shall not be entitled to receive any additional compensation from Owner for the General Conditions beyond the above not to exceed sum amount. Contractor acknowledges and agrees that unspent General Condition's items shall be returned to the Owner through a deductive change order.

2.5 The Contractor's bond costs for the entire Work on this Project shall be a not to exceed sum amount of \_\_\_\_\_ (\$ \_\_\_\_\_) said not to exceed sum amount is included within the above noted GMP.

2.6 Monthly installment payment of the Contractor's Fee shall be based upon the percent actual completion of the designated portion of the Work for each particular month as evidenced by actual costs submitted. The General Condition expenses shall be based upon actual costs as indicated by the supplied back up documents

2.7 In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the required Work and are otherwise reimbursable without duplication as a Cost of the Work, but excluding all items that are to be reimbursed under the not to exceed sum General Condition expense amount noted in paragraph 2.3 above, the Parties have agreed to establish a contingency within the GMP in an amount not-to-exceed amount of \_\_\_\_\_ Dollars \_\_\_\_\_

(\$ \_\_\_\_\_). Contingency funds shall be used to cover costs that may result from incomplete design and unanticipated costs that arise during construction that are not identified by the Construction Documents and other Owner requested changes in the Work. The Contractor shall not be entitled to overhead and profit or other fee's for Work charged against this Contingency. Contractor shall not proceed with any portion of the Work which it intends to charge against this contingency without first obtaining Owner's expressed written authorization to proceed. Contractor acknowledges and agrees that any Work which is to be charged against the contingency allowance that does not receive such prior written approval from the Owner shall be deemed to be part of Contractor's basic Work compensated within the GMP and not chargeable against the contingency. The Contractor shall keep a log of all items charged against the Contingency on the form attached as **Exhibit P** to this Agreement and shall utilize the Owner's "Contingency Authorization Form" attached to this Agreement as **Exhibit O** for all contingency related reimbursements. The Owner reserves the right, at its sole discretion, to withhold its consent on contingency expenditures. Further, any contingency expenditure become part of the Contract Documents and are incorporated by reference herein. Unused contingency remaining at the end of the Work will be credited from the GMP. Contractor has no entitlement to any portion of any

unused contingency.

2.8 The Parties have agreed to establish an allowance within the GMP for \_\_\_\_\_ in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_). Construction Manager shall not proceed with any portion of the Work associated with the aforesaid allowance ("Allowance Work") without first obtaining Owner's express written authorization to proceed with said Allowance Work. Allowance Amounts are reflected in Attachments \_\_\_\_\_ through \_\_\_\_\_. Contractor acknowledges and agrees that any Work which is to be charged against the allowance that does not receive such prior written approval from the Owner shall be deemed to be part of Contractor's basic Work compensated within the GMP and not chargeable against the allowance. The Contractor shall keep a log of all items charged against the Allowance and shall utilize the Owner's "Allowance Authorization Form" for all allowance related reimbursements. The Owner reserves the right, at its sole discretion, to withhold its consent on allowance expenditures. Further, any allowance expenditures become part of the Contract Documents and are incorporated by reference herein. Unused allowance amounts remaining at the end of the Work will be credited from the GMP. Contractor has no entitlement to any portion of any unused allowance.

2.9 Pursuant to Exhibit A, Paragraph 12.4 of the Agreement, if at the time final payment is made to Contractor the total Cost of the Work has been increased by approved Change Orders and Construction Change Directives, excepting change orders for Owner Direct Purchases, in an amount causing the original GMP as set forth in this Amendment to be increased or reduced by more than \$ \_\_\_\_\_, then the Construction Manager's Fee shall be correspondingly increased or decreased by \$ \_\_\_\_\_.

2.10 If project requires trench excavation in excess of five feet deep the Construction Manager acknowledges the requirements set forth in Section 553.63 of the Florida Statutes titled Trench Safety Act. Construction Manager certifies that the required trench safety standards will be in effect during the period of construction of the Project and Construction Manager agrees to comply with all such required trench safety standards. The cost of such compliances is included in the GMP

2.11 Construction Manager is responsible, without reimbursement from Owner, for re-inspection fees and costs; to the extent such re-inspections are due to the fault or neglect of Construction Manager.

### **ARTICLE 3**

#### **CONTRACT TIME AND DAMAGES**

3.1 The Construction Phase Commencement Date for the Work is \_\_\_\_\_. The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the Work is {---Written Substantial Completion Day---} () days ("Contract Time"). THE SUBSTANTIAL COMPLETION DATE IS THEREFORE ESTABLISHED AS \_\_\_\_\_. The Final Completion date is established no longer than 30 working days from the date the County delivers the final List to the Contractor as provided in section 4.6 of Exhibit A to this Agreement, unless extended in accordance with §218.735(7)(c), Florida Statutes.

3.2 Pursuant to the Amendment, the Parties have established a liquidated damage rate for reasons stated therein, which the Parties acknowledge and agree apply to this Amendment and Contractor's responsibility to complete the Work within the Contract Time as stated herein.

Accordingly, the liquidated damage rate established in the Agreement shall be assessed against Contractor for each calendar day Contractor fails to achieve Substantial Completion and/or Final Completion of the Work within the Contract Time.

**ARTICLE 4**

**MISCELLANEOUS**

4.1 Except as expressly modified herein, the terms and conditions of the Contract remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Contract, Owner and Construction Manager agree that the terms of this Amendment shall prevail and control.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

OWNER

Construction Manager

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

Attest:

Attest: \_\_\_\_\_

\_\_\_\_\_  
J. K. "Jess" Irby, Esq., Clerk  
(SEAL)

By/Title \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
Alachua County Attorney

**Attachment 1:**

**List of Drawings, Specifications, and Addendums**

See Attached

**Attachment 2**  
**Schedule of Values**

See Attached

**Attachment 3**

**Itemized General Condition Expenses**

See Attached

**Attachment 4**

**List of Alternates**



**Attachment 5**

**Assumptions and Clarifications**

See Attached

**Attachment 6**

**COMPLETION SCHEDULE**

See Attached

**Attachment 7**

**LIST OF SUB-CONTRACTORS AND MAJOR SUPPLIERS**

See Attached

**EXHIBIT L**

**TRUTH-IN-NEGOTIATION CERTIFICATE**

In compliance with the Construction Managers Competitive Negotiations Act, Section 287.055, Florida Statutes, Construction Manager certifies that the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of the execution of this Agreement of which this Certificate is a part. The original price and any additions thereto shall be adjusted to exclude any significant sums by which the Owner determines the Agreement amount was increased due to inaccurate, incomplete or non- current wage rates and other factual unit costs.

**CONSTRUCTION MANAGER:**

D E SCORPIO CORPORATION

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**EXHIBIT M: CERTIFICATION OF MEETING ALACHUA COUNTY WAGE ORDINANCE**

The undersigned certifies that all employees, contracted and subcontracted, completing services as part of this Agreement are paid, and will continue to be paid, in accordance with Chapter 22, Article XII of the Alachua County Code of Ordinance (“Wage Ordinance”).

Project Description: *#13356 Construction Manager (CM) at Risk with DE Scorpio; #13356 Construction Manager (CM) at Risk with DE Scorpio for the construction of Alachua County Fire Rescue Stations*

Corporate Name: D E SCORPIO CORPORATION  
Address: 2700 NW 43 STREET SUITE B  
City/State/Zip: GAINESVILLE, FL 32606  
Phone Number: {---Phone---}  
Point of Contact: \_\_\_\_\_  
E-mail Address: jessica.maclaren@descorpiocorp.com

**CONTRACTOR**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

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

**IF THE CONTRACTOR IS NOT A NATURAL PERSON, PLEASE PROVIDE A CERTIFICATE OF INCUMBENCY AND AUTHORITY, OR A CORPORATE RESOLUTION, LISTING THOSE AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF YOUR ORGANIZATION. IF A NATURAL PERSON, THEN YOUR SIGNATURE MUST BE NOTARIZED.**

**EXHIBIT N: CONTINGENCY FUND DISBURSEMENT REQUEST**

**Date:** \_\_\_\_\_ **Request No.:** \_\_\_\_\_

**Project Name:** #13356 Construction Manager (CM) at Risk with DE Scorpio; Contract No. 133546

**Project No.**

**Architect:**

**Contractor:** D E SCORPIO CORPORATION

The contractor hereby requests that the following activity be funded by the project contingency. The contractor is making this request after determining that the listed activity is not part of the itemized guaranteed maximum price and/or any change orders related to the project. Signature by all Parties listed below is required in order to disburse the contingency funds. The owner requires a minimum of one original returned to the owner along with a copy of the updated contingency fund log sheet, after execution of the request by all Parties.

<u>Description of Activity</u>	<u>Reason For Request</u>

Additional Time Requested:  Yes  No \_\_\_\_\_ Calendar Days

**Cost of Activity:**

Subcontractor Costs (Attach Price Quote(s)): \$ \_\_\_\_\_

Subcontractor Allowed Markup Per Owner's Contract: \$ \_\_\_\_\_

Total Requested Contingency Disbursement Amount \$ \_\_\_\_\_

Previous Contingency Amount \$ \_\_\_\_\_

Amount of This Request \$ \_\_\_\_\_

Current Contingency Amount \$ \_\_\_\_\_

**Accepted by:**

\_\_\_\_\_  
(Owner)

\_\_\_\_\_  
Date

**Accepted By:**

\_\_\_\_\_  
*(Design Professional)*

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

**Accepted By:**

\_\_\_\_\_  
*(Contractor)*

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









CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 4/13/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

Table with 2 main columns: PRODUCER (Gainesville, FL-Johnson Group-Hub International Florida) and CONTACT NAME (Hanover American Insurance, Allmerica Financial Benefit Insurance Company, etc.).

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Main table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liab, Workers Compensation, Pollution Liability, and Professional Liab.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Project: 10404 SW 24th Avenue, Gainesville, FL Alachua County Board of County Commissioners is Additional Insured with Primary and Non-contributory basis including Products & Completed Operations with regards to General Liability & Auto Liability, and Waiver of Subrogation applies for General Liability, Auto Liability and Workers' Compensation, when required in a written contract or agreement with the Insured, as per the terms and conditions of the policies endorsements.

Table with 2 columns: CERTIFICATE HOLDER (Alachua County Board of County Commissioners) and CANCELLATION (SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.). Includes an authorized representative signature.

## BUSINESS AUTO COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

### SECTION I - COVERED AUTOS

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

#### A. Description Of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
2	Owned "Autos" Only	Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
3	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
5	Owned "Autos" Subject To No-Fault	Only those "autos" you own that are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos"	Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
9	Nonowned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs.

<b>19</b>	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only	Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.
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## B. Owned Autos You Acquire After The Policy Begins

1. If Symbols **1, 2, 3, 4, 5, 6** or **19** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol **7** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

## C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos

If Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. "Loss"; or
  - e. Destruction.

## SECTION II - LIABILITY COVERAGE

### A. Coverage

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

#### 1. Who Is An Insured

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
  - (1) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
- (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

## 2. Coverage Extensions

### a. Supplementary Payments

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All costs taxed against the "insured" in any "suit" against the "insured" we defend.
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

### b. Out-Of-State Coverage Extensions

While a covered "auto" is away from the state where it is licensed we will:

- (1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

## B. Exclusions

This insurance does not apply to any of the following:

### 1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

### 2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- b. That the "insured" would have in the absence of the contract or agreement.

### 3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

### 4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
  - (1) Employment by the "insured"; or

- (2) Performing the duties related to the conduct of the "insured's" business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

#### 5. Fellow Employee

"Bodily injury" to any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business.

#### 6. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

#### 7. Handling Of Property

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

#### 8. Movement Of Property By Mechanical Device

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

#### 9. Operations

"Bodily injury" or "property damage" arising out of the operation of:

- a. Any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment"; or
- b. Machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

#### 10. Completed Operations

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraph a. or b. above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

#### 11. Pollution

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:

- (1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b.** Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c.** After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs **6.b.** and **6.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

## 12. War

"Bodily injury" or "property damage" arising directly or indirectly out of:

- a.** War, including undeclared or civil war;
- b.** Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c.** Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

## 13. Racing

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

## C. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined, resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage Endorsement, Uninsured Motorists Coverage Endorsement or Underinsured Motorists Coverage Endorsement attached to this Coverage Part.

## SECTION III - PHYSICAL DAMAGE COVERAGE

### A. Coverage

1. We will pay for "loss" to a covered "auto" or its equipment under:

#### **a. Comprehensive Coverage**

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

#### **b. Specified Causes Of Loss Coverage**

Caused by:

- (1) Fire, lightning or explosion;

- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

**c. Collision Coverage**

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

**2. Towing**

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

**3. Glass Breakage - Hitting A Bird Or Animal - Falling Objects Or Missiles**

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

**4. Coverage Extensions**

**a. Transportation Expenses**

We will pay up to \$20 per day to a maximum of \$600 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

**b. Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

**B. Exclusions**

- 1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

**a. Nuclear Hazard**

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

**b. War Or Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.



2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.
3. We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this insurance:
  - a. Wear and tear, freezing, mechanical or electrical breakdown.
  - b. Blowouts, punctures or other road damage to tires.
4. We will not pay for "loss" to any of the following:
  - a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
  - b. Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measurement equipment.
  - c. Any electronic equipment, without regard to whether this equipment is permanently installed, that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound.
  - d. Any accessories used with the electronic equipment described in Paragraph c. above.

Exclusions **4.c.** and **4.d.** do not apply to:

- a. Equipment designed solely for the reproduction of sound and accessories used with such equipment, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or such equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto"; or
- b. Any other electronic equipment that is:
  - (1) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system; or

- (2) An integral part of the same unit housing any sound reproducing equipment described in Paragraph a. above and permanently installed in the opening of the dash or console of the covered "auto" normally used by the manufacturer for installation of a radio.

5. We will not pay for "loss" to a covered "auto" due to "diminution in value".

#### **C. Limit Of Insurance**

1. The most we will pay for "loss" in any one "accident" is the lesser of:
  - a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
  - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

#### **D. Deductible**

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

### **SECTION IV - BUSINESS AUTO CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions:

#### **A. Loss Conditions**

##### **1. Appraisal For Physical Damage Loss**

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

## **2. Duties In The Event Of Accident, Claim, Suit Or Loss**

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:
  - (1) How, when and where the "accident" or "loss" occurred;
  - (2) The "insured's" name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.
- b. Additionally, you and any other involved "insured" must:
  - (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
  - (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
  - (4) Authorize us to obtain medical records or other pertinent information.
  - (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.
- c. If there is "loss" to a covered "auto" or its equipment you must also do the following:
  - (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
  - (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
  - (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.

- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

## **3. Legal Action Against Us**

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

## **4. Loss Payment - Physical Damage Coverages**

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

## **5. Transfer Of Rights Of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

## **B. General Conditions**

### **1. Bankruptcy**

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

### **2. Concealment, Misrepresentation Or Fraud**

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This Coverage Form;

- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

### 3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

### 4. No Benefit To Bailee - Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

### 5. Other Insurance

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this Coverage Form provides for the "trailer" is:
  - (1) Excess while it is connected to a motor vehicle you do not own.
  - (2) Primary while it is connected to a covered "auto" you own.
- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".
- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary for any liability assumed under an "insured contract".
- d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

### 6. Premium Audit

- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

### 7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and

- b. Within the coverage territory.

The coverage territory is:

- a. The United States of America;
- b. The territories and possessions of the United States of America;
- c. Puerto Rico;
- d. Canada; and
- e. Anywhere in the world if:
  - (1) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and
  - (2) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

## 8. Two Or More Coverage Forms Or Policies Issued By Us

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

### SECTION V - DEFINITIONS

**A.** "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".

**B.** "Auto" means:

1. A land motor vehicle, "trailer" or semitrailer designed for travel on public roads; or
2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

**C.** "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these.

**D.** "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:

- (1) Being transported or towed by, handled, or handled for movement into, onto or from the covered "auto";

- (2) Otherwise in the course of transit by or on behalf of the "insured";

- (3) Being stored, disposed of, treated or processed in or upon the covered "auto";

**b.** Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

**c.** After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraph **6.b.** or **6.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and

- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- E.** "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- F.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- G.** "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.
- H.** "Insured contract" means:
1. A lease of premises;
  2. A sidetrack agreement;
  3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
  6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".
- An "insured contract" does not include that part of any contract or agreement:
- a. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing; or
  - b. That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
  - c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
- I.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- J.** "Loss" means direct and accidental loss or damage.
- K.** "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  2. Vehicles maintained for use solely on or next to premises you own or rent;
  3. Vehicles that travel on crawler treads;
  4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - a. Power cranes, shovels, loaders, diggers or drills; or
    - b. Road construction or resurfacing equipment such as graders, scrapers or rollers.
  5. Vehicles not described in Paragraph 1., 2., 3., or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - b. Cherry pickers and similar devices used to raise or lower workers.
  6. Vehicles not described in Paragraph 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- a. Equipment designed primarily for:
  - (1) Snow removal;
  - (2) Road maintenance, but not construction or resurfacing; or
  - (3) Street cleaning;
- b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- L. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

M. "Property damage" means damage to or loss of use of tangible property.

N. "Suit" means a civil proceeding in which:

- 1. Damages because of "bodily injury" or "property damage"; or
- 2. A "covered pollution cost or expense", to which this insurance applies, are alleged.

"Suit" includes:

- a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.
- O. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
  - P. "Trailer" includes semitrailer.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMERCIAL GENERAL LIABILITY BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SUMMARY OF COVERAGES

1.	Additional Insured by Contract, Agreement or Permit	Included
2.	Additional Insured – Primary and Non-Contributory	Included
3.	Blanket Waiver of Subrogation	Included
4.	Bodily Injury Redefined	Included
5.	Broad Form Property Damage – Borrowed Equipment, Customers Goods & Use of Elevators	Included
6.	Knowledge of Occurrence	Included
7.	Liberalization Clause	Included
8.	Medical Payments – Extended Reporting Period	Included
9.	Newly Acquired or Formed Organizations - Covered until end of policy period	Included
10.	Non-owned Watercraft	51 ft.
11.	Supplementary Payments Increased Limits	
	- Bail Bonds	\$2,500
	- Loss of Earnings	\$1000
12.	Unintentional Failure to Disclose Hazards	Included
13.	Unintentional Failure to Notify	Included

This endorsement amends coverages provided under the Commercial General Liability Coverage Part through new coverages, higher limits and broader coverage grants.

**1. Additional Insured by Contract, Agreement or Permit**

The following is added to **SECTION II – WHO IS AN INSURED:**

- (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;
- (2) Premises you own, rent, lease or occupy;

- (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.
- (4) Will not be broader than coverage provided to any other insured.
- (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.
- c. This provision does not apply:
- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".
- (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
- (3) To any lessor of equipment:
- (a) After the equipment lease expires; or
- (b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor
- (4) To any:
- (a) Owners or other interests from whom land has been leased which takes place after the lease for the land expires; or
- (b) Managers or lessors of premises if:
- (i) The occurrence takes place after you cease to be a tenant in that premises; or
- (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
- advertising injury" involved the rendering of or failure to render any professional services by or for you.
- d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION III – LIMITS OF INSURANCE**:
- The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:
1. Required by the contract, agreement or permit described in Paragraph a.; or
  2. Available under the applicable Limits of Insurance shown in the Declarations.
- This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
- 2. Additional Insured – Primary and Non-Contributory**
- The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 4. **Other insurance:**
- Additional Insured – Primary and Non-Contributory**
- If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under **SECTION II – WHO IS AN INSURED**, is primary and non-contributory, the following applies:
- If other valid and collectible insurance is available to the Additional Insured for a loss covered under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:
- a. Primary Insurance**
- This insurance is primary to other insurance that is available to the Additional Insured which covers the Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:



**b. Excess Insurance**

- (1) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:
- (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (b) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;
  - (c) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner; or
  - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of **SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**.
- (2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (3) When this insurance is excess over other Insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - (b) The total of all deductible and self insured amounts under all that other

insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers

**3. Blanket Waiver of Subrogation**

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damage under this coverage form. The damage must arise out of your activities under a written contract with that person or organization. This waiver applies only to the extent that subrogation is waived under a written contract executed prior to the "occurrence" or offense giving rise to such payments.

**4. Bodily Injury Redefined**

**SECTION V – DEFINITIONS, Definition 3.** "bodily injury" is replaced by the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

**5. Broad Form Property Damage – Borrowed Equipment, Customers Goods, Use of Elevators**

- a. **SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Paragraph 2. Exclusions** subparagraph j. is amended as follows:

Paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform

- a. worked on; or
- b. used in your manufacturing process.
- c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent

#### 6. Knowledge of Occurrence

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 2. **Duties in the Event of Occurrence, Offense, Claim or Suit:**

- e. Notice of an "occurrence", offense, claim or "suit" will be considered knowledge of the insured if reported to an individual named insured, partner, executive officer or an "employee" designated by you to give us such a notice.

#### 7. Liberalization Clause

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

##### Liberalization Clause

If we adopt any revision that would broaden the coverage under this Coverage Form without additional premium, within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

#### 8. Medical Payments – Extended Reporting Period

- a. **SECTION I – COVERAGES, COVERAGE C – MEDICAL PAYMENTS**, Paragraph 1. **Insuring Agreement**, subparagraph a.(3)(b) is replaced by the following:
  - (b) The expenses are incurred and reported to us within three years of the date of the accident; and
- b. This coverage does not apply if **COVERAGE C – MEDICAL PAYMENTS** is excluded either by the provisions of the Coverage Part or by endorsement.

#### 10. Non-Owned Watercraft

**SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph 2. **Exclusions**, subparagraph g.(2) is replaced by the following:

##### g. Aircraft, Auto Or Watercraft

(2) A watercraft you do not own that is:

- (a) Less than 51 feet long; and
- (b) Not being used to carry persons or property for a charge;

This provision applies to any person who, with your consent, either uses or is responsible for the use of a watercraft.

#### 11. Supplementary Payments Increased Limits

**SECTION I – SUPPLEMENTARY PAYMENTS COVERAGES A AND B**, Paragraphs 1.b. and 1.d. are replaced by the following:

1.b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

1.d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1000 a day because of time off from work.

#### 12. Unintentional Failure to Disclose Hazards

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 6. **Representations:**

We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.

#### 13. Unintentional Failure to Notify

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 2. **Duties in the Event of Occurrence, Offense, Claim or Suit:**

Your rights afforded under this policy shall not be

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**

**WC 00 03 13**

(Ed. 4-84)

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**\*Blanket Waiver of Subrogation Applies\***

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Date Prepared: March 8, 2022

Carrier: Bridgefield Employers Insurance Company

Effective Date of Endorsement: May 30, 2022

Policy Number: 830-52716

Countersigned by:

A handwritten signature in black ink, appearing to be 'J. E. Scorpio', written over a horizontal line.

Insured: D. E. Scorpio Corporation

**WC 00 03 13** (Ed. 4-84)









# Item #28, 22-0314

Final Audit Report

2022-05-12

Created:	2022-05-11
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