

***PINELLAS COUNTY GOVERNMENT IS COMMITTED TO PROGRESSIVE PUBLIC POLICY, SUPERIOR PUBLIC SERVICE, COURTEOUS PUBLIC CONTACT, JUDICIOUS EXERCISE OF AUTHORITY AND SOUND MANAGEMENT OF PUBLIC RESOURCES, TO MEET THE NEEDS AND CONCERNS OF OUR CITIZENS TODAY AND TOMORROW.***



**CONSTRUCTION MANAGER AT RISK (CMAR) SERVICES AGREEMENT**

**RFP TITLE: Construction Manager for new Security and Entry Center**

**RFP CONTRACT NO. 21-704-NC(PLU)**

**CM FIRM: Williamson Dacar Associates, Inc.**

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## **CONSTRUCTION MANAGER AT RISK (CMAR) AGREEMENT**

**THIS Agreement**, made and entered into by and between the Board of County Commissioners of Pinellas County, a political subdivision of the State of Florida, hereinafter designated the OWNER, and Creative Contractors, Inc. ("Construction Manager At Risk"), a Florida Corporation, to perform all work ("Work") in connection with the management and construction of the County's Jail Security and Entry Center project, located in Pinellas County, Florida, said Work being set forth in the plans and specifications being prepared by Williamson Dacar Associates, Inc. d/b/a Williamson Design Associates, the Architect of Record ("Design Professional"), and all other Contract Documents hereafter specified.

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

### **ARTICLE 1 GENERAL PROVISIONS**

#### **1.1 RELATIONSHIP OF PARTIES**

The Construction Manager at Risk is the Owner's independent contractor and additionally accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager at Risk reasonable skill and judgment and to cooperate with the Design Professional in furthering the interests of the Owner. The Construction Manager at Risk shall furnish construction and management services and use the Construction Manager at Risk best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Construction Manager at Risk shall cooperate and coordinate with the Owner, Design Professional, and other persons or entities employed by the Owner for the Project.

#### **1.2 GENERAL CONDITIONS**

For the Construction Phase, the General Conditions of the Contract for Construction shall be as outlined in Exhibit A herein. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, Exhibit A shall apply to the Preconstruction Phase only as specifically provided in this Agreement.

### **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager at Risk shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services.

#### **2.1 PRECONSTRUCTION PHASE**

##### **2.1.1 PRELIMINARY EVALUATION**

The Construction Manager at Risk shall familiarize itself with the approved facilities program for the Project and shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other. The Construction Manager at Risk shall jointly participate with the Owner and Design Professional in formation of the final Project design. It is the Construction Manager at Risk responsibility to assure that all parties coordinate efforts and revise the program to remain within the Owner's budget.

##### **2.1.2 CONSULTATION**

The Construction Manager at Risk and the Design Professional shall jointly schedule and attend regular meetings with the Owner. The Construction Manager at Risk shall consult with the Owner and Design Professional regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager at Risk shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies. In order to provide effective consultation, the Construction Manager at Risk shall perform or cause to be performed such structural or environmental tests, surveys or reports as it deems necessary, including but not limited to those listed within Section 3.1.4.

### **2.1.3 PRELIMINARY PROJECT SCHEDULE**

When Project requirements described in Section 3.1 have been sufficiently identified, the Construction Manager at Risk shall prepare, and periodically update, a preliminary Project schedule based upon the Critical Path Method for the Design Professional's review and the Owner's approval. The Construction Manager at Risk shall obtain the Design Professional's approval when reporting the preliminary Project schedule relating to the performance of the Design Professional's services. The Construction Manager at Risk shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Design Professional and Construction Manager at Risk. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial and Final Completion

### **2.1.4 PHASED CONSTRUCTION**

The Construction Manager at Risk shall make recommendations to the Owner and Design Professional regarding the phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities. The first phase of construction shall begin only after construction documents are 100% complete for all phase of work and a final Guaranteed Maximum Price (GMP) has been established and approved by the Owner.

### **2.1.5 PRECONSTRUCTION COST ESTIMATES**

**2.1.5.1** The Design Professional is required to provide design concepts, narratives, and drawings, and probable construction cost estimates. During each phase of design, in keeping with the Owner's goals and the program for the Project, the Construction Manager at Risk shall familiarize itself with these design documents and provide the Owner and Design Professional with a report detailing construction issues and concerns relating to the design, with detail appropriate to the phase of design. Without limitation of the foregoing, each construction report shall:

- A. include an estimate of overall construction cost, including Construction Manager at Risk contingency not to exceed the amount specified for each phase of design, including a comparison of the estimate to the Owner's budget for construction;
- B. identify conceptual decisions necessary to prepare accurate cost reports with the fewest assumptions, qualifications, and exclusions;
- C. include an analysis and evaluation of jobsite management, site logistics, and schedule considerations;
- D. include an analysis and evaluation of the constructability of the design concepts, narratives, or drawings;
- E. include an analysis and evaluation of the design concepts, narratives, or drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction including, without limitation, unusual or custom materials, value analysis, identification of long-lead materials affecting the construction schedule, availability of labor, and other factors affecting construction, and, in the report provided during the Construction Documents Phase, suggestions for alternatives for matters which may delay the construction schedule;
- F. Address problems, conflicts, defects, or deficiencies in the design concepts and offer recommendations and resolutions of same; and
- G. identify any other issues which Construction Manager at Risk reasonably believes may have a negative impact on the Project schedule, budget, or performance.
- H. The Construction Manager at Risk shall include a statement that the cost estimates are within the Owner's budget.
- I. After working with the Design Professional to reconcile the Design Professional's probable construction cost with the estimate submitted by the Construction Manager at Risk, the Construction Manager at Risk shall provide a Reconciled Estimate Report approved by the Design Professional describing the resolutions of the Design Professional and Construction Manager at Risk estimates.

The Construction Manager at Risk and the Design Professional shall jointly schedule and attend regular meetings with the Owner and evaluate the preliminary design drawings. The Design Professional shall prepare and distribute minutes of these meetings, and the Construction Manager at Risk shall verify the accuracy and completeness of the minutes.

When the Owner has sufficiently identified the Project requirements and the Design Professional has prepared other basic design criteria constituting the Program, the Construction Manager at Risk shall prepare the first construction report as outlined above and coordinate the efforts of the Owner and Design Professional to assure the Owner's budget and schedule are met at the end of this phase. The Construction Manager at Risk contingency included in the estimate of overall construction costs provided at the end of this phase shall not exceed 10%.

**2.1.5.2 N/A**

**2.1.5.3 N/A**

**2.1.5.4** If any estimate of overall construction costs or schedule within any construction report submitted to the Owner exceeds a previously approved budget or schedule, the Construction Manager at Risk shall make appropriate recommendations to the Owner and Design Professional.

## **2.1.6 SUBCONTRACTORS AND SUPPLIERS**

The Construction Manager at Risk shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Design Professional for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Design Professional will promptly reply in writing to the Construction Manager at Risk if the Design Professional or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Design Professional to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Design Professional later to object to or reject any proposed subcontractor or supplier.

## **2.1.7 LONG-LEAD-TIME ITEMS**

The Construction Manager at Risk shall recommend to the Owner and Design Professional a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager at Risk. Upon the Owner's acceptance of the Construction Manager at Risk Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager at Risk, who shall accept responsibility for such items as if procured by the Construction Manager at Risk. The Construction Manager at Risk shall expedite the delivery of long-lead-time items.

## **2.1.8 EXTENT OF RESPONSIBILITY**

The Construction Manager at Risk shall assume the responsibility to guide the Owner and Design Professional through each phase of design with assessments and recommendations in the construction reports to assure the Owner's budget and schedule are maintained at the end of each phase. The recommendations and advice of the Construction Manager at Risk concerning design alternatives shall be subject to the review and approval of the Owner and the Design Professional. If the Construction Manager at Risk recognizes that portions of the Drawings and Specifications are at variance with the applicable laws, statutes, ordinances, building codes, rules, and regulations, the Construction Manager at Risk shall promptly notify the Design Professional and Owner in writing.

## **2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

The Construction Manager at Risk shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

## **2.1.10 PUBLIC ENTITIES CRIMES ACT**

CONSTRUCTION MANAGER AT RISK is directed to the Florida Public Entity Crime Act, Fla. Stat. 287.133, and Fla. Stat. 287.135 regarding Scrutinized Companies, and CONSTRUCTION MANAGER AT RISK agrees that its bid and, if awarded, its performance of the agreement will comply with all applicable laws including those referenced herein. CONSTRUCTION MANAGER AT RISK represents and certifies that CONSTRUCTION MANAGER AT RISK is and will at all times remain eligible to bid for and perform the services subject to the requirements of these, and other applicable, laws. CONSTRUCTION MANAGER AT RISK agrees that any contract awarded to CONSTRUCTION MANAGER AT RISK will be subject to termination by the County if CONSTRUCTION MANAGER AT RISK fails to comply or to maintain such compliance.

## **2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME**

**2.2.1** When the Drawings and Specifications are complete, the Construction Manager at Risk shall negotiate a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work, all applicable permits, bonds, insurance, and the Construction Manager at Risk Fee.

**2.2.2** The cost of the Work shall be based upon competitive bids obtained from subcontractors selected by the Construction Manager at Risk for each portion of the Work outlined in the Construction Documents and subject to the review and approval of the Design Professional and Owner. The Construction Manager at Risk shall attempt to provide at least three bids for every trade. When three bids cannot be provided, the Construction Manager at Risk shall provide justification satisfactory to the Owner's Representative. The complete bid process shall be fully transparent to the Design Professional and Owner, and each shall be invited to observe the process. The Construction Manager at Risk shall schedule pre-bid meetings with each subcontractor to review the scope of work in detail prior to submitting bids. Following the submittal of bids, the Construction Manager at Risk shall review the bid together with each subcontractor to ascertain the entire scope of work is included in their bids. The Construction Manager at Risk shall select each subcontractor determined by the Construction Manager at Risk to be qualified to provide the services at the best value.

**2.2.3** The cost of the Work shall be the cost for a "turnkey" project delivery and shall include the Construction Manager at Risk contingency, not to exceed 4%. Construction Manager has use of Contingency, as authorized by the County, for unforeseen material cost escalation due to global supply chain issues related to pandemics.

**2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE**

The Construction Manager at Risk shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

1. A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
2. A list of allowances and a statement of their basis.
3. A list of the exclusions and clarifications made by the Construction Manager at Risk in the preparation of the Guaranteed Maximum Price proposal.
4. The proposed Guaranteed Maximum Price, including a complete Schedule of Values outlining the selected competitive bid for each trade category, along with allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.
5. A Construction Schedule outlining critical path activities and identifying the Dates of Substantial and Final Completion, by phase if applicable, upon which the proposed Guaranteed Maximum Price is based.

**2.2.5** The Construction Manager at Risk shall meet with the Owner and Design Professional to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Design Professional discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager at Risk, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**2.2.6** Promptly upon receipt of the complete package constituting the Guaranteed Maximum Price from the Construction Manager at Risk, Pinellas County shall process the package for approval by the Board of County Commissioners. The Construction Manager at Risk shall assure that its selected bidders maintain and uphold their prices until the Board has an opportunity to approve the Guaranteed Maximum Price.

**2.2.7** Prior to the Owner's acceptance of the Construction Manager at Risk Guaranteed Maximum Price Proposal and issuance of a Notice to Proceed and a Building Permit, the Construction Manager at Risk shall not incur any cost to be reimbursed as part of the Cost of the Work other than cost included within the preconstruction phase of the Agreement.

**2.2.8** Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in the Guaranteed Maximum Price Amendment in a form substantially as attached as Exhibit I. The Guaranteed Maximum Price shall be subject to additions and deductions only by a change in the Work as provided in the Contract Documents, and the Dates of Substantial and Final Completion(s) shall be subject to adjustment only as provided in the Contract Documents.

**2.2.9** The Owner shall authorize and cause the Design Professional to submit to the Owner's Representative and Construction Manager at Risk a Corrected/Conforming Construction Document Set incorporating all agreed-upon qualifications, exclusions, clarifications, value engineering, design review comments, permit review comments, pre-bid inquiries, revisions or suggestions elicited during the development of the Guaranteed Maximum Price Proposal and other agreed-upon modifications made after the Drawings and Specifications have been submitted to the Owner and the Construction Manager at Risk and shall become the basis for construction. The Corrected/Conforming Construction Document Set shall be furnished to the Construction Manager at Risk no later than ten (10) days after GMP approval.

**2.2.10 FLORIDA TRENCH SAFETY ACT - CERTIFICATION AND DISCLOSURE STATEMENT**

The undersigned acknowledges the requirements of the Florida Trench Safety Act (Section 553.60 et. seq. Florida Statutes).

- A. The Bidder further acknowledges that the Florida Trench Safety Act, (the Act) establishes the Federal excavation safety standards set forth at 29 C.F.R. Section 1926.650 Subpart P, as the interim state standard until such time as the state of Florida, through its Department of Labor and Employment Security, or any successor agency, adopts, updates, or revises said interim standard. This State of Florida standard may be supplemented by special shoring requirements established by the State of Florida or any of its political subdivisions.
- B. The Bidder, as Contractor, shall comply with all applicable excavation/trench safety standards.
- C. The contractor shall consider the geotechnical data available from the County, if any, the Contractor's own sources, and all other relevant information in its design of the trench safety system to be employed on the subject Project. The Contractor acknowledges sole responsibilities for the selection of the data on which it relies in designing the safety system, as well as for the system itself.
- D. The amounts that the Bidder has set forth for pipe installation includes the following excavation/trench safety measures and the linear feet of trench excavated under each safety measure. These units, costs, and unit values shall be disclosed solely for the purpose of compliance with procedural requirements of the Act. No adjustment to the Agreement Time or price shall be made for any difference in the actual number of linear feet of trench excavation, except as may be otherwise provided in these Contract Documents.

	<b>Trench Safety Measure (Description)</b>	<b>Units of Measure (LF, SF)</b>	<b>Unit (Quantity)</b>	<b>Unit Cost</b>	<b>Extended Cost</b>
1.				\$	\$
2.				\$	\$
3.				\$	\$
4.				\$	\$
5.				\$	\$

For Information Only, Not for Payment Purposes

\$

Bidder may use additional sheets as necessary to extend this form. Failure to complete the above may result in the bid being declared non-responsive.

- E. The amount disclosed as the cost of compliance with the applicable trench safety requirements does not constitute the extent of the Contractor's obligation to comply with said standards. The Contractor shall extend additional sums at no additional cost to the County, if necessary, to comply with the Act (except as otherwise be provided).
- F. Acceptance of the bid to which this certification and disclosure applies in no way represents that the County or its representatives has evaluated and thereby determined that the above costs are adequate to comply with the applicable trench safety requirements nor does it in any way relieve the Contractor of its sole responsibility to comply with the applicable trench safety requirements.

## **2.3 CONSTRUCTION PHASE**

### **2.3.1 GENERAL**

**2.3.1.1** The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager at Risk Guaranteed Maximum Price proposal, execution of the Amendment, and issuance of a Notice to Proceed and a Building Permit.

### **2.3.2 ADMINISTRATION**

**2.3.2.1** Those portions of the Work that the Construction Manager at Risk does not customarily perform with the Construction Manager at Risk own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager at Risk. The Construction Manager at Risk shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Design Professional. The Construction Manager at Risk shall make a recommendation of contracts to be awarded to specific bidders subject to the approval of the Owner and Design Professional. Once this list of awarded contracts is finalized and submitted in the Guaranteed Maximum Price Proposal, it may not be altered without the express written mutual consent of the Owner and Design Professional.

**2.3.2.2** The Guaranteed Maximum Price shall be established following completion of the bid process, which shall be fully transparent to the Owner and Design Professional, and selection and approval of the successful bidders with the concurrence of the Owner and Design Professional. The Guaranteed Maximum Price shall be submitted to the Pinellas County Board of County Commissioners for approval and shall include a full and binding commitment by the Construction Manager at Risk to a "not to exceed" cost and schedule.

**2.3.2.3** Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee.

**2.3.2.4** The Construction Manager at Risk shall schedule and conduct bi-weekly meetings at which the Owner, Design Professional, Construction Manager at Risk and appropriate Subcontractors can discuss the status of the Work. The Construction Manager at Risk shall prepare and promptly distribute meeting minutes.

**2.3.2.5** The Construction Manager at Risk shall prepare a schedule in accordance with Section 3.10 of the General Conditions of the Contract for Construction (Exhibit A), and shall include this schedule in the Guaranteed Maximum Price submittal to the Board of County Commissioners. This schedule shall include the Owner's occupancy requirements.

**2.3.2.6** The Construction Manager at Risk shall provide monthly written reports to the Owner and Design Professional on the progress of the entire Work. The Construction Manager at Risk shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Design Professional.

**2.3.2.7** The Construction Manager at Risk shall maintain cost control and invoicing for the Work in strict accordance with the Schedule of Values submitted in the Guaranteed Maximum Price proposal and approved by the Board of County Commissioners.

## **2.4 PROFESSIONAL SERVICES**

Section 3.12.10 of the General Conditions of the Contract for Construction (Exhibit A) shall apply to both the Preconstruction and Construction Phases.

## **2.5 HAZARDOUS MATERIALS**

Section 10.3 of General Conditions of the Contract for Construction (Exhibit A) shall apply to both the Preconstruction and Construction Phases.



## **ARTICLE 3 OTHER RESPONSIBILITIES**

### **3.1 INFORMATION AND SERVICES**

**3.1.1** The Owner shall provide, through the documents prepared by the Design Professional, full information regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

**3.1.2** Prior to commencement of the Construction Phase, the Owner shall provide a Purchase Order to the Construction Manager for the amount of work in the Schedule of Values identified by the Construction Manager at Risk to be completed in each fiscal year of the project construction schedule subject to the provisions of Article 14 of the General Conditions of the Contract for Construction.

**3.1.3** The Construction Manager at Risk shall establish and update an overall budget for the Project, based on the program established with the Owner and Design Professional. The overall budget shall include Owner contingencies for changes in the Work and other costs as approved by the Owner.

### **3.1.4 STRUCTURAL AND ENVIRONMENTAL INVESTIGATIONS**

Construction Manager at Risk 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 at Risk to acquaint itself with any applicable conditions shall not relieve Construction Manager at Risk 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 after acceptance of the Guaranteed Maximum Price Amendment by the Board of County Commissioners.

**3.1.4.1** Site Conditions. Construction Manager at Risk acknowledges that it has will rely on any surveys, tests, reports, plans or other such site data supplied to Construction Manager at Risk by Owner.

**3.1.4.2** During the Preconstruction Phase, Construction Manager at Risk shall determine the need for, procure and evaluate the results of all geo-technical engineering and related consulting services necessary to determine the location and extent of Utilities and sub-soil, air and water conditions at the site of the Work required to insure that sufficient information is available for completion of the Work, including but not limited to all topographical surveys, soil tests, drainage plans, applicable test borings, test pits, soil bearing values, percolation tests, air and water pollution tests ("Site Test Data"). Construction Manager at Risk shall provide to Owner copies of the Site Test Data as soon as practicable after it is received by the Construction Manager at Risk.

**3.1.4.3** After Construction Manager at Risk begins the Construction Phase on the Project, having incorporated the knowledge from the Site Test Data, any additional work, regardless of its nature and scope, that is thereafter found to be required in order to complete the work based on the results of the Site Test Data, shall be performed at Construction Manager at Risk sole cost and expense to the extent that such costs exceed any line item within the Schedule of Values, as provided in the Guaranteed Maximum Price Amendment. During the Construction Phase, 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 at Risk as part of its scope of site investigative services required pursuant to the terms of the Contract Documents, then Construction Manager at Risk 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 shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Construction Manager at Risk 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 at Risk as part of its investigative services, and that no change in the terms of the Contract is justified, Owner shall so notify Construction Manager at Risk in writing, stating its reasons. Claims by Construction Manager at Risk in opposition

to such determination by Owner must be made within seven (7) calendar days after Construction Manager at Risk receipt of Owner's written determination notice. The provisions of Article 15 of the General Conditions of the Contract for Construction shall apply if Owner and Construction Manager at Risk cannot agree on an adjustment to the Contract Amount or Contract Time.

### **3.2 OWNER'S REPRESENTATIVE**

The Owner shall designate in writing an "Owner's Representative". The Owner's Representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, allowances and contingency authorizations, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager at Risk. Any change in the Work that increases the Guaranteed Maximum Price, or extends the Dates of Substantial Completion or Final Completion, must be approved by the Pinellas County Board of County Commissioners.

### **3.3 DESIGN PROFESSIONAL**

The Owner shall retain a Design Professional to provide Basic Services, including architecture, civil, structural, mechanical and electrical engineering services, other than cost estimating services. The Owner shall authorize and cause the Design Professional to provide the services described in Section 2.1.5 of this agreement as required by the Owner and Construction Manager at Risk to complete the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Design Professional, and Construction Manager at Risk.

### **3.4 LEGAL REQUIREMENTS**

The Construction Manager at Risk shall have the responsibility to identify and acquire all permits required for the Project by authorities having jurisdiction. The Construction Manager at Risk shall further have the responsibility to assure the Project is constructed in strict accordance with all authorities having jurisdiction on the Project.

## **ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

The Owner shall compensate and make payments to the Construction Manager at Risk for Preconstruction Phase services as follows:

### **4.1 COMPENSATION**

**4.1.1** For the services described in Sections 2.1, 2.2, and 3.1.4, the Construction Manager at Risk compensation shall be calculated as follows:

**4.1.1.1** A stipulated sum of \$45,000.00. In accordance with attached Exhibit L, Construction Manager at Risk Pre-Construction Phase Fee Proposal.

### **4.2 PAYMENTS**

**4.2.1** Prior to the beginning of the preconstruction phase, the Construction Manager at Risk shall submit to the Owner's Representative for review and approval a Schedule of Values for work to be completed in accordance with Article 2, Sections 2.1 and 2.2. Payments shall be made monthly based on the Construction Manager at Risk invoice outlining portions of the services completed to date and their relationship to the Schedule of Values.

**4.2.2** Payments are due and payable in accordance with the Local Government Prompt Payment Act, Section 218.70, et.seq. of the Florida State Statutes.

## **ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

The Owner shall compensate the Construction Manager at Risk for Construction Phase services as follows:

## **5.1 COMPENSATION**

**5.1.1** For the Construction Manager at Risk performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager at Risk in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager at Risk Fee determined as follows:

A percentage of the actual Cost of the Work (5.5 %) of TBD totaling TBD at the time the GMP is incorporated into the agreement. The Construction Manager at Risk Fee shall be adjusted at the same percentage rate for changes in the Work.

## **5.2 GUARANTEED MAXIMUM PRICE**

**5.2.1** The sum of the Cost of the Work and the Construction Manager at Risk Fee are guaranteed by the Construction Manager at Risk not to exceed the amount provided in Guaranteed Maximum Price Amendment, subject to additions and deductions by changes in the Work as provided in the Contract Documents.

## **5.3 CHANGES IN THE WORK**

**5.3.1** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.2 of the General Conditions of the Contract for Construction (Exhibit A).

**5.3.2** In calculating adjustments to subcontracts, a 10% markup for overhead and profit shall be applied to the total sum of time and materials required for the adjustment, and the Construction Manager at Risk Fee percentage shall then be applied to this subtotal along with bonds and insurance.

**5.3.3** In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions of the Contract for Construction (Exhibit A) shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager at Risk Fee as defined in Section 5.1.1 of this Agreement.

**5.3.4** Whenever a change in the Work results in an increase to the Guaranteed Maximum Price, or extension of time for Substantial Completion or Final Completion, a Change Order shall be prepared in accordance with the format outlined in Exhibit G Change Order and submitted to the Pinellas County Board of County Commissioners for approval in a timely manner.

## **ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE (THE GUARANTEED MAXIMUM PRICE)**

### **6.1 COSTS TO BE REIMBURSED**

**6.1.1** The term "Cost of the Work" shall mean all costs necessarily and reasonably incurred by the Construction Manager at Risk in the proper performance of the Work to deliver a "turnkey" project to the Owner. The Cost of the Work as set forth in this Article 6 shall be included on the Schedule of Values as part of the package comprising the Guaranteed Maximum Price submitted to the Board of County Commissioners for approval.

### **6.1.2 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK**

The following costs shall be included in the Cost of the Work and borne by the Construction Manager at Risk at no additional cost to the Owner:

- .1** In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of the General Conditions of the Contract for Construction (Exhibit A).
- .2** In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager at Risk Subcontractors or suppliers.

### **6.2 COSTS NOT TO BE REIMBURSED**

**6.2.1** The Cost of the Work shall not include:

- 1.** Salaries and other compensation of the Construction Manager at Risk personnel stationed at the Construction Manager at Risk principal office or offices other than the site office, except as specifically provided in Section 6.1.

2. Expenses of the Construction Manager at Risk principal office and offices other than the site office, except as specifically provided in Section 6.1.
3. Overhead and general expenses, except as may be expressly included in Section 6.1.
4. The Construction Manager at Risk capital expenses, including interest on the Construction Manager at Risk capital employed for the Work.
5. Rental costs of machinery and equipment, except as specifically provided in Section 6.1.
6. Except as provided in Section 6.1, costs due to the negligence of the Construction Manager at Risk or to the failure of the Construction Manager at Risk to fulfill a specific responsibility to the Owner set forth in this Agreement.
7. Costs incurred in the performance of Preconstruction Phase Services or in a failure to perform Preconstruction Phase Services.
8. Any cost not specifically and expressly described in Section 6.1.
9. Costs which would cause the Guaranteed Maximum Price to be exceeded.

### **6.3 ACCOUNTING RECORDS**

**6.3.1** The Owner shall have the right to audit, inspect, and copy the Construction Manager at Risk and any subcontractor's records, as such records relate to the purchase of materials for and construction of the Project.

Unless a longer time is required by applicable law, the Construction Manager at Risk and its subcontractors shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. The Owner shall have access to such books, records, and documents as required in this section for the purpose of inspection and audit during normal business hours, at the Owner's cost, upon five (5) days written notice.

Such audit rights are provided for within the text of the Pinellas County Code § 2-176(j), as that Code may be amended from time to time.

### **6.4 CONTRACT TIME AND LIQUIDATED DAMAGES**

**6.4.1** Time is of the essence in the performance of the Work under this Agreement. The "Pre-construction Phase Commencement Date" shall be established in a Notice to Proceed to be issued by the Owner. The Construction Manager at Risk 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 the Construction Manager at Risk prior to the Pre-construction Phase Commencement Date shall be at the sole risk of the Construction Manager at Risk. The "Construction Phase Commencement Date" shall be established in a Notice to Proceed to be issued by the Owner after the Construction Documents and Guaranteed Maximum Price have been submitted to and approved by the Pinellas County Board of County Commissioners. The Construction Manager at Risk 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. 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 section 6.4.2 below.

**6.4.2** Because the Work is to be completed in two phases, the timely completion of the first phase is critical to the timely completion of the second phase, and therefore, completion of the entire Project. Accordingly, the Construction Manager at Risk agrees to provide Pre-construction Phase Services in accordance with Article 2.1 herein. With respect to the Construction Phase Services, the Guaranteed Maximum Price Amendment shall include the amount of days in which that portion of the Work associated with the Construction Phase Services must be substantially completed by the Construction Manager at Risk. That Substantial Completion date shall be established in terms of calendar days after the Construction Phase Commencement Date. In the event the Construction Manager at Risk and Owner fail to reach an agreement on the Contract Time and the Substantial Completion Date, the Owner may elect to terminate this Contract. In the event of any such termination, the Construction Manager at Risk shall be entitled to receive that portion of the Contract Amount attributable to the Pre-construction Phase Services earned to the date of termination. The Construction Manager at Risk shall not be entitled to any further or additional compensation from the 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 Construction Manager at Risk obtains a Certificate of Occupancy (CO) or a Temporary Certificate of Occupancy (TCO) from the jurisdictional building authority and has completed the Work to the point where the Owner can occupy or utilize the Work for its intended purpose. The Design Professional shall

certify the date the Substantial Completion of the Work is achieved. If the Owner has designated portions of the Work to be turned over to the Owner prior to Substantial Completion of the entire Work, the Design Professional shall certify the date as to when Substantial Completion of such designated portions of the Work have been achieved. The entire Work shall be fully completed and ready for final acceptance by the Owner following completion of the punch list within 45 calendar days after the Substantial Completion date ("Final Completion").

**6.4.3** The Owner and Construction Manager at Risk recognize that, since time is of the essence for this contract, the Owner will suffer financial loss if the Work associated with the Construction Phase is not substantially completed within the time specified in the Guaranteed Maximum Price Amendment, as said time may be adjusted as provided for herein. In such event, the total amount of the 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 Pinellas County, Florida. It is hereby agreed that is appropriate and fair that the Owner receive liquidated damages from the Construction Manager at Risk if the Construction Manager at Risk fails to achieve Substantial Completion of the Work within the required Contract Time. Should the Construction Manager at Risk fail to substantially complete the Work within the required time period, the Owner shall be entitled to assess, as liquidated damages but not as a penalty, \$ 400.00 for each calendar day thereafter until Substantial Completion is achieved. The Construction Manager at Risk 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 the Owner's actual damages at the time of contracting if the Construction Manager at Risk fails to substantially complete the Work in a timely manner.

**6.4.4** 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 observed by the Owner, 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 the Owner.

## **ARTICLE 7 CONSTRUCTION PHASE PAYMENTS**

### **7.1 PROGRESS PAYMENTS**

**7.1.1** Based upon Applications for Payment submitted to the Design Professional by the Construction Manager at Risk and Certificates for Payment issued by the Design Professional, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager at Risk as provided below and in accordance with Section 4.2.2.

**7.1.2** The period covered by each Application for Payment shall not exceed one calendar month.

**7.1.3** The Owner's Representative shall establish a schedule for the Construction Manager at Risk submittal of Applications for Payment. The Owner shall make payments in accordance with Section 4.2.2.

**7.1.4** With each Application for Payment, the Construction Manager at Risk shall submit a complete and updated Schedule of Values for the present pay period and an executed Waiver of Lien Release for the previous pay period.

**7.1.5** Each Application for Payment shall be based upon the most recent Schedule of Values submitted by the Construction Manager at Risk in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager at Risk Fee and Construction Manager at Risk Contingency shall be shown as single separate items. The Schedule of Values shall be prepared based on the format approved in the original Guaranteed Maximum Price submittal package. This schedule shall be used as a basis for reviewing the Construction Manager at Risk Applications for Payment.

**7.1.6** Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**7.1.7** The Owner shall withhold 5% retainage on each Application for Payment submitted by the Construction Manager at Risk through final completion of the Work. No retainage will be withheld on general conditions, P&P bond, general liability insurance, temporary services and rental items not incorporated into the finish product (such as casual labor, temporary walls, trash removal, etc.)

**7.1.8** The Construction Manager at Risk shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site, except as otherwise set forth in the Contract Documents.

**7.1.9** In taking action on the Construction Manager at Risk Applications for Payment, the Design Professional shall be entitled to rely on their observations during their most recent periodic site inspection at the end of the pay period for which the pay application has been submitted.

## **7.2 FINAL PAYMENT**

**7.2.1** Final payment shall be made by the Owner to the Construction Manager at Risk when (1) the Contract has been fully performed by the Construction Manager at Risk except for the Construction Manager at Risk responsibility to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager at Risk and reviewed by the Owner; and (3) a final Certificate for Payment has then been issued by the Design Professional; such final payment shall be made by the Owner in accordance with Section 4.2.2.

**7.2.2** The amount of the final payment shall be the sum of the Cost of the Work substantiated by the Construction Manager at Risk in the final Schedule of Values plus the Construction Manager at Risk Fee, but not more than the Guaranteed Maximum Price.

**7.2.3** The Owner will review the Construction Manager at Risk final pay application following receipt and certification of same by the Design Professional and shall process it in accordance with Section 4.2.2. The Design Professional will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager at Risk or notify the Construction Manager at Risk and Owner in writing of the Design Professional's reasons for withholding a certificate as provided in Section 9.5.1 of the General Conditions of the Contract for Construction (Exhibit A). The time periods shall comply with Section 4.2.2.

**7.2.4** In the event a dispute occurs between the Owner and Construction Manager at Risk it shall be resolved pursuant to Article 15 of the General Conditions of the Contract for Construction (Exhibit A).

## **ARTICLE 8 INSURANCE AND BONDS**

### **8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER AT RISK –per Section C of RFP (attached).**

During both phases of the Project, the Construction Manager at Risk shall purchase and maintain insurance as set forth in Section 11.1 of the General Conditions of the Contract for Construction (Exhibit A). Other than Professional Liability, the insurance company shall waive its Rights of Subrogation against the Owner. The amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Services Office (ISO) forms and endorsements or broader where applicable:

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

Workers' Compensation – Florida Statutory Requirements	
Employers Liability – Per Employee	\$500,000
Per Employee Disease	\$500,000
Policy Limit Disease	\$500,000

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

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

The aggregate limits shall be separately applicable to this Project through the use of an endorsement approved by the Owner. Applicable deductibles shall be the sole responsibility of the Construction Manager at Risk.

Pinellas County, Board of County Commissioners shall be endorsed to the required policy or policies as an **ADDITIONAL NAMED INSURED**.

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

Bodily Injury, including	\$1,000,000
Death & Property Damage	

**8.1.4** Umbrella Liability Insurance of Excess Liability Insurance shall not be less than \$5,000,000 each occurrence and aggregate. Coverage shall be excess of the Employer's Liability, Commercial General Liability and Automobile Liability coverages required herein and shall include all coverages on a "following form" basis.

## **8.2 ADDITIONAL INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER AT RISK**

During the term of this Agreement, the Construction Manager at Risk shall purchase and maintain insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of the General Conditions of the Contract for Construction (Exhibit A). Such insurance shall be written for not less than the following limits, or greater if required by law:

**8.2.1** Professional Liability Insurance (Errors and Omissions) with at least minimum limits as follows: If "claims made" coverage is provided, "tail coverage" extending three (3) years beyond completion and acceptance of the project with proof of "tail coverage" to be submitted with the invoice for final payment. In lieu of "tail coverage", Contractor may submit annually to the County, for a three (3) year period, a current certificate of insurance providing "claims made" insurance with prior acts coverage in force with a retroactive date no later than commencement date of this contract.

General Aggregate	\$1,000,000
Each Occurrence or Claim	\$1,000,000

For acceptance of Professional Liability coverage included within another policy required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Professional Liability and other coverage combined.

**8.2.2** Pollution Legal/Environmental Legal Liability Insurance for pollution losses arising from all services performed to comply with this contract. Coverage shall apply to sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in Bodily Injury or Property Damage. If policy is written on a Claims Made form, a retroactive date is required, and coverage must be maintained for 3 years after completion of contract or "tail coverage must be purchased. Coverage should include and be for the at least the minimum limits listed below:

- 1) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- 2) Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensation damages.
- 3) Cost of Cleanup/Remediation.

General Aggregate	\$1,000,000
Each Occurrence or Claim	\$1,000,000

For acceptance of Pollution Legal/Environmental Legal Liability coverage included within another policy coverage required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Pollution Legal/Environmental Legal Liability and other coverage combined.

### **8.3 PERFORMANCE BOND AND PAYMENT BOND**

**8.3.1** The Construction Manager at Risk shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager at Risk usual source, and the cost thereof shall be included in the Guaranteed Maximum Price. The amount of each bond shall be equal to the full value of the Guaranteed Maximum Price.

**8.3.2** The Construction Manager at Risk shall deliver the required bonds to the Owner within five (5) business days following the execution of the Guaranteed Maximum Price Amendment by the Board of County Commissioners.

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

### **9.1 DISPUTE RESOLUTION**

**9.1.1** During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Article 15 of the General Conditions of the Contract for Construction (Exhibit A).

### **9.2 OTHER PROVISIONS**

**9.2.1** Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the General Conditions of the Contract for Construction (Exhibit A).

#### **9.2.2 EXTENT OF CONTRACT**

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager at Risk and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager at Risk. If any term or condition in the Contract Documents shall conflict with another, the documents shall be interpreted in the following order of precedence:

1. Guaranteed Maximum Price Amendment
2. Change Orders
3. Agreement
4. General Conditions
5. Specifications
6. Drawings

#### **9.2.3 OWNERSHIP AND USE OF DOCUMENTS**

Article 1.5 of the General Conditions of the Contract for Construction (Exhibit A) shall apply to both the Preconstruction and Construction Phases.

#### **9.2.4 GOVERNING LAW**

The Contract shall be governed by the Laws of the State of Florida.

#### **9.2.5 ASSIGNMENT**

The Owner and Construction Manager at Risk respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

## **ARTICLE 10 TERMINATION OR SUSPENSION**

### **10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE**

**10.1.1** Prior to execution by both parties of Guaranteed Maximum Price Amendment establishing the Guaranteed Maximum Price, the Owner may terminate this Agreement at any time without cause.

**10.1.2** If the Owner terminates this Agreement pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager at Risk shall be compensated for Preconstruction Phase Services



performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

**10.1.3** If the Owner terminates this Agreement pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager at Risk shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

1. Take the Cost of the Work incurred by the Construction Manager at Risk.
2. Add the Construction Manager at Risk Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager at Risk Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.
3. Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager at Risk fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager at Risk which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager at Risk shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager at Risk, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager at Risk under such subcontracts or purchase orders.

## **10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE.**

## **10.3 SUSPENSION**

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions of the Contract for Construction (Exhibit A).

**IN WITNESS WHEREOF**, the parties have caused this instrument to be executed on the day and year as written below.

**OWNER:**

PINELLAS COUNTY acting by and through its  
Board of County Commissioners

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

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

ATTEST: \_\_\_\_\_

Ken Burke  
Clerk of the Circuit Court

By: \_\_\_\_\_  
Deputy Clerk

Approved as to Form:

By: Joseph Morrissey  
Office of County Attorney

OFFICIAL SEAL

**CONSTRUCTION MANAGER  
AT RISK:**

\_\_\_\_\_

By: Joshua Bomstein

Print Name: JOSHUA BOMSTEIN

Title: PRESIDENT

CORPORATE SEAL

## EXHIBIT A - GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

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## ARTICLE 1 GENERAL PROVISIONS

## **1.1 BASIC DEFINITIONS**

### **1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Construction Manager at Risk (hereinafter the Agreement) and consist of the Agreement, General Conditions of the Contract for Construction, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Contingency Authorization or Allowance, or (4) a written order for a minor change in the Work. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Construction Manager at Risk bid or proposal, or portions of Addenda relating to bidding requirements.

### **1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification (the methods defined in Article 7). The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Construction Manager at Risk and the Design Professional or the Design Professional's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Design Professional or the Design Professional's consultants or (4) between any persons or entities other than the Owner and the Construction Manager at Risk.

### **1.1.3 THE WORK**

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

### **1.1.4 THE PROJECT**

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

### **1.1.5 THE DRAWINGS**

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

### **1.1.6 THE SPECIFICATIONS**

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

### **1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design Professional and the Design Professional's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

### **1.1.8 TURNKEY**

The term "turnkey", where used in the Agreement, refers to the Construction Manager at Risk obligation to provide the Owner with a complete, operational, functioning product at final completion of the Work. The Construction Manager at Risk shall be required to include all materials and work reasonably implied from the scope of work outlined in the Contract Documents and necessary for a complete and functioning product even though they may not have been shown in detail.

## **1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

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

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

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

### **1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents.

### **1.4 INTERPRETATION**

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

### **1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**1.5.1** The Owner, having paid the Design Professional for its services, shall be deemed to own said drawings, specifications and other instruments of service that relate to the specific individual application, site, and use intended for the Owner. The Construction Manager at Risk, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service.

**1.5.2** The Construction Manager at Risk, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Construction Manager at Risk, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Design Professional, and the Design Professional’s consultants, as applicable.

**1.5.3** The Owner shall also be deemed to own all drawings, specifications and other Instruments of Service created pursuant to the Contract Documents.

### **1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## **ARTICLE 2 OWNER**

### **2.1 GENERAL**

**2.1.1** The Owner is the Pinellas County Board of County Commissioners and is referred to throughout the Contract Documents as if singular in number. Except as otherwise specifically provided herein, the Design Professional does not have any authority to bind the Owner. The term “Owner’s Representative” has the meaning as described in Section 3.2 of the Contract.

**2.1.2** The Owner, as a governmental agency, is not subject to the enforcement of construction or mechanic’s lien rights. Payment and Performance Bonds are required in accordance with Article 8 of the Construction Manager At Risk Agreement.

### **2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**2.2.1** All permits and fees are the responsibility of the Construction Manager at Risk under the Contract Documents, including those required under Section 3.7.1. The Owner shall secure and pay for only those necessary approvals,

easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities specifically identified in the Contract Documents.

**2.2.2** The Owner shall furnish existing available project information such as surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Construction Manager at Risk shall be required to confirm the accuracy of information furnished by the Owner (and shall include costs involved in this confirmation in the project budget) and shall exercise proper precautions relating to the safe performance of the Work.

**2.2.3** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager at Risk performance of the Work with reasonable promptness after receiving the Construction Manager at Risk written request for such information or services.

**2.2.4** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Construction Manager at Risk an electronic copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### **2.3 OWNER'S RIGHT TO STOP THE WORK**

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

### **2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Construction Manager at Risk defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Construction Manager at Risk the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Professional's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Construction Manager at Risk are not sufficient to cover such amounts, the Construction Manager at Risk shall pay the difference to the Owner.

## **ARTICLE 3 CONSTRUCTION MANAGER AT RISK**

### **3.1 GENERAL**

**3.1.1** The Construction Manager at Risk is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Construction Manager at Risk shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Construction Manager at Risk shall designate in writing a representative who shall have express authority to bind the Construction Manager at Risk with respect to all matters under this Contract. The term "Construction Manager at Risk" means the Construction Manager at Risk or the Construction Manager at Risk authorized representative.

**3.1.2** The Construction Manager at Risk shall perform the Work in accordance with the Contract Documents.

**3.1.3** Unless the terms of the Contract are modified in accordance with Article 7, the Construction Manager at Risk shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in the Design Professional's assistance in administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Construction Manager at Risk.

### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONSTRUCTION MANAGER AT RISK**

**3.2.1** Execution of the Contract by the Construction Manager at Risk is a representation that the Construction Manager at Risk has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Submittal of the GMP proposal by the Construction Manager at Risk is a representation that the Construction Manager at Risk has performed complete due diligence, including but not limited to the following:

**3.2.1.1** Construction Manager at Risk has visited the site of the proposed work and fully acquainted himself with

conditions relating to construction and labor so that he fully understands the facilities, difficulties and restrictions attending the execution of work under the contract. The Construction Manager at Risk as thoroughly examined and is familiar with the Contract Documents. Failure or omission of the Construction Manager at Risk to receive or examine any form, instrument, addendum or other documents, or to visit the site and acquaint himself with conditions existing thereon, shall in no way relieve the Construction Manager at Risk from any obligation with respect to the Contract. Owner does not warrant the accuracy or completeness of any reports, soil samples, or any other site condition information or data made available including, but not limited to, underground utility location.

**3.2.1.2** The Construction Manager at Risk acknowledges that he has satisfied himself as to the nature and location of the work; the general and local conditions, including but not restricted to, those bearing upon transportation, disposal, handling and storage of materials; availability of labor, water, electric power, roads; and uncertainties of weather, river stages, tides or similar physical conditions at the site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during prosecution of the work.

**3.2.1.3** The Construction Manager at Risk further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials, obstacles, or conditions to be encountered.

**3.2.1.4** Any failure by the Construction Manager at Risk to acquaint himself with any aspect of the work or with any of the applicable conditions shall not relieve the Construction Manager at Risk from responsibility for adequately evaluating the difficulty or cost of successfully performing the work under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

**3.1.2.5** The Owner assumes no responsibility for any conclusions or interpretations made by the Construction Manager at Risk on the basis of the information made available by the Owner. The Owner also assumes no responsibility for any understanding or representations made by its officers or agents during or prior to the execution of this Contract, unless such understanding or interpretations are made in writing.

**3.2.2** Because the Contract Documents are complementary, the Construction Manager at Risk shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Construction Manager at Risk and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Construction Manager at Risk shall promptly report to the Design Professional any errors, inconsistencies or omissions discovered by or made known to the Construction Manager at Risk as a request for information in such form as the Design Professional may require. It is recognized that the Construction Manager at Risk review is made in the Construction Manager at Risk capacity as a Construction Manager at Risk and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**3.2.3** The Construction Manager at Risk is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager at Risk shall promptly report to the Design Professional any nonconformity discovered by or made known to the Construction Manager at Risk as a request for information in such form as the Design Professional may require.

**3.2.4** If the Construction Manager at Risk believes that additional cost or time is involved because of clarifications or instructions the Design Professional issues in response to the Construction Manager at Risk notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Construction Manager at Risk shall make Claims as provided in Article 15. If the Construction Manager at Risk fails to perform the obligations of Sections 3.2.1, 3.2.2 or 3.2.3, the Construction Manager at Risk shall pay such costs and damages to the Owner as would have been avoided if the Construction Manager at Risk had performed such obligations.

### **3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**3.3.1** The Construction Manager at Risk shall supervise and direct the Work, using the Construction Manager at Risk best skill and attention. The Construction Manager at Risk shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Construction Manager at Risk shall evaluate the jobsite safety thereof and, except as stated below,



shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Construction Manager at Risk determines that such means, methods, techniques, sequences or procedures may not be safe, the Construction Manager at Risk shall give timely written notice to the Owner and Design Professional and shall not proceed with that portion of the Work without further written instructions from the Owner's Representative. If the Construction Manager at Risk is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Construction Manager at Risk, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

**3.3.2** The Construction Manager at Risk shall be responsible to the Owner for acts and omissions of the Construction Manager at Risk employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Construction Manager at Risk or any of its Subcontractors.

**3.3.3** The Construction Manager at Risk shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **3.4 LABOR AND MATERIALS**

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

**3.4.2** Except in the case of minor changes in the Work in accordance with Sections 3.12.8 or 7.4, the Construction Manager at Risk may make substitutions only with the consent of the Owner, after evaluation by the Design Professional and in accordance with a Change Order.

**3.4.3** The Construction Manager at Risk shall enforce strict discipline and good order among the Construction Manager at Risk employees and other persons carrying out the Work. The Construction Manager at Risk shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **3.5 WARRANTY**

The Construction Manager at Risk warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Construction Manager at Risk further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. Unless otherwise specified, if within twelve (12) months after Substantial Completion and acceptance, any work is found to be defective or not in conformance with the Contract Documents, the Construction Manager at Risk shall correct it promptly after receipt of written notice from the County. The Construction Manager at Risk shall also be responsible for and pay for replacement or repair of adjacent materials or work which may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which the County is entitled as a matter of law. The Construction Manager at Risk warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Construction Manager at Risk, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Design Professional or Owner's Representative, the Construction Manager at Risk shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **3.6 TAXES**

The Construction Manager at Risk shall pay sales, consumer, use and similar taxes for the Work provided by the Construction Manager at Risk that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS**

**3.7.1** Unless otherwise provided in the Contract Documents, the Construction Manager at Risk shall secure and pay for the building permit as well as for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work.

**3.7.2** The Construction Manager at Risk shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**3.7.3** If the Construction Manager at Risk performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Construction Manager at Risk shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **3.8 ALLOWANCES**

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

**3.8.2** Unless otherwise provided in the Contract Documents,

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

**3.8.3** Materials and equipment under an allowance shall be selected by the Owner according to the time frames established in the Construction Schedule in the GMP Amendment.

### **3.9 SUPERINTENDENT**

**3.9.1** The Construction Manager at Risk shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Construction Manager at Risk, and communications given to the superintendent shall be as binding as if given to the Construction Manager at Risk.

**3.9.2** The Construction Manager at Risk shall employ the superintendent on the Project as submitted to the Owner during the Request For Presentation and the basis upon which the final Construction Manager at Risk was selected.

**3.9.3** The Construction Manager at Risk shall not change the superintendent without the Owner's consent. A new, proposed superintendent must be submitted to the Owner, meet with the Owner's full approval, and prior written consent shall be obtained from by the Owner before any change in superintendent can occur.

### **3.10 CONSTRUCTION MANAGER AT RISK CONSTRUCTION SCHEDULES**

**3.10.1** The Construction Manager at Risk shall prepare and include a construction schedule utilizing the Critical Path Method for the Work in the Guaranteed Maximum Price submittal. This construction schedule shall meet with the Owner's and Design Professional's approval. The schedule shall not exceed time limits current under the Contract Documents, shall be revised (with the approval of the Owner and Design Professional) at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**3.10.2** The Construction Manager at Risk shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Design Professional's approval. The Design Professional's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Construction Manager at Risk construction schedule, and (2) allow the Design Professional ten (1) days after receipt of submittals from Construction Manager at Risk to review and reject or approve the same. If the Construction Manager at Risk fails to submit a submittal schedule, the

Construction Manager at Risk shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**3.10.3** The Construction Manager at Risk shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner and Design Professional.

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Construction Manager at Risk shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Design Professional and shall be delivered to the Design Professional for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

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

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

**3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Construction Manager at Risk proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Design Professional is subject to the limitations of Section 4.2.7. Informational submittals upon which the Design Professional is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Design Professional without action.

**3.12.5** The Construction Manager at Risk shall review for compliance with the Contract Documents, approve and submit to the Design Professional Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

**3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager at Risk represents to the Owner that the Construction Manager at Risk has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**3.12.7** The Construction Manager at Risk shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Design Professional.

**3.12.8** The Work shall be in accordance with approved submittals except that the Construction Manager at Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Design Professional's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Construction Manager at Risk has specifically informed the Design Professional in writing of such deviation at the time of submittal and (1) the Owner's Representative has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or (3) a Contingency Authorization has been issued authorizing the deviation. The Construction Manager at Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Design Professional's approval thereof.

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

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

### **3.13 LANDS FOR WORK AND ACCESS THERETO**

**3.13.1** Owner will furnish and define the limits of land for access to the construction site and for the site proper. All information shown in the Contract Documents constitutes the extent of land provided by the Owner. Any and all other lands required by the Construction Manager at Risk shall be procured by the Construction Manager at Risk at the Construction Manager at Risk expense. Private property will not be used for storage without written permission of the property owner or lessee, with copies furnished to the Owner's Representative.

**3.13.2** Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the Construction Manager at Risk only with the approval of the Owner's Representative after obtaining necessary permits, and shall be built with labor and materials furnished by the Construction Manager at Risk without expense to the Owner. Such temporary buildings and/or utilities shall remain the property of the Construction Manager at Risk and will be removed by him at his expense upon the completion of the work. With the written consent of the Owner's Representative, such buildings and/or utilities may be abandoned and need not be removed.

**3.13.3** The Construction Manager at Risk shall confine all construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents, and shall not unreasonably encumber the Project site with construction equipment or other material or equipment. The Construction Manager at Risk shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the work. Storage sites shall be restored to their original condition at the Construction Manager at Risk expense. This shall not apply to the stripping and storing of topsoil or other salvaged materials.

### **3.14 CUTTING AND PATCHING**

**3.14.1** The Construction Manager at Risk shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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

### **3.15 CLEANING UP**

**3.15.1** The Construction Manager at Risk shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Construction Manager shall remove waste materials, rubbish, the Construction Manager at Risk tools, construction equipment, machinery and surplus materials from and about the Project.

**3.15.2** If the Construction Manager at Risk fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Construction Manager at Risk.

### **3.16 ACCESS TO WORK**

The Construction Manager at Risk shall provide the Owner and Design Professional access to the Work in preparation and progress wherever located.

### **3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

### **3.18 INDEMNIFICATION**

**3.18.1** To the maximum extent permitted by Florida law, the Construction Manager at Risk shall defend, indemnify, and hold harmless the 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 Agreement by the Construction Manager at Risk 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 the Construction Manager at Risk or anyone employed or utilized by the Construction Manager at Risk in the performance of this Agreement. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

The duty to defend under this Section 3.18 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Construction Manager at Risk, 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 the Construction Manager at Risk. The Construction Manager at Risk obligation to indemnify and defend under this Section 3.18 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the Owner or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

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

## **ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

### **4.1 DESIGN PROFESSIONAL**

**4.1.1** The Owner shall retain a Design Professional lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Design Professional in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**4.1.2** If the employment of the Design Professional is terminated, the Owner shall employ a successor design professional whose status under the Contract Documents shall be that of the Design Professional.

## **4.2 DESIGN PROFESSIONAL'S ROLE IN ADMINISTRATION OF THE CONTRACT**

**4.2.1** The Design Professional will assist the Owner in the administration of the Contract as described in the Contract Documents (1) during construction, (2) until the date the Design Professional issues the final Certificate For Payment, and (3) with the Owner's concurrence, and from time to time during the one-year period for correction of Work described in Section 12.2. The Design Professional will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

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

**4.2.3** The Construction Manager at Risk will be solely responsible to perform the Work in accordance with the requirements of the Contract Documents. Neither the Owner, nor the Design Professional will have control over or charge of, nor will they be responsible for acts or omissions of the Construction Manager at Risk, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**4.2.4** Based on the Design Professional's evaluations of the Construction Manager at Risk Applications for Payment, the Design Professional will review and certify the amounts due the Construction Manager at Risk and will issue Certificates for Payment to the Owner in such amounts.

**4.2.5** The Design Professional may recommend to the Owner that Owner reject Work that does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable, the Design Professional will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

**4.2.6** The Design Professional will review and approve, or take other appropriate action upon, the Construction Manager at Risk submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Design Professional's action will be taken within ten (10) days of receipt of submittals as to cause no delay in the Work or in the activities of the Owner, Construction Manager at Risk, or separate contractors, while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Manager at Risk as required by the Contract Documents. The Design professional's review of the Construction Manager at Risk submittals shall not relieve the Construction Manager at Risk of the obligations under Sections 3.3, 3.5 and 3.12.

**4.2.7** The Design Professional will review Change Orders and proposed Contingency Authorization, and may propose minor changes in the Work as provided in Section 7.4. The Design Professional will respond with ten (10) days of receipt of the change orders or contingency authorizations.

**4.2.8** The Design Professional will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Construction Manager at Risk pursuant to Section 9.10; and issue a final Certificate for Payment to the Owner pursuant to Section 9.10.

**4.2.9** At the Owner's direction, the Design Professional will provide one or more project representatives to assist in carrying out the Design Professional's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as outlined in the Owner/Design Professional Agreement and shall be made available to the Construction Manager at Risk.

**4.2.10** The Design Professional will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager at Risk. The Design Professional's response to such requests will be made in writing within ten (10) days of receipt of such requests.

**4.2.11** Interpretations and decisions of the Design Professional will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Design Professional will endeavor to secure faithful performance by both Owner and Construction Manager at Risk, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

**4.2.12** The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**4.2.13** The Design Professional will review and respond to Requests for Information (RFI's) about the Contract Documents. The Design Professional's response to such requests will be made in writing within 5 days of receipt. If appropriate, the Design Professional will prepare and issue supplemental Drawings and Specifications in response to the requests for information. To the greatest extent possible, Construction manager at Risk will resolve all questions relating to the Contract Documents prior to submission of the Guaranteed Maximum Price Proposal.

## **ARTICLE 5 SUBCONTRACTORS**

### **5.1 DEFINITIONS**

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

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

### **5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

**5.2.1** Prior to beginning the competitive bid process to develop the Guaranteed Maximum Price, the Construction Manager at Risk shall furnish in writing to the Owner with a copy to the Design Professional the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed to bid each principal portion of the Work. The Design Professional shall reply within ten (10) days to the Construction Manager at Risk in writing stating (1) whether the Owner or the Design Professional has reasonable objection to any such proposed person or entity, (2) whether the Design Professional or Owner wishes to recommend another subcontractor or subcontractors to be added to the bid list, or (3) that the Design Professional requires additional time for review. Failure of the Owner or Design Professional to reply within the ten (10) day period shall constitute notice of no reasonable objection.

**5.2.2** The Construction Manager at Risk shall not contract with a proposed person or entity to whom the Owner or Design Professional has made reasonable and timely objection. The Construction Manager at Risk shall not be required to contract with anyone to whom the Construction Manager at Risk has made reasonable objection.

**5.2.3** If the Owner or Design Professional has reasonable objection to a person or entity proposed by the Construction Manager at Risk, the Construction Manager at Risk shall propose another to whom the Owner or Design Professional has no reasonable objection.

**5.2.4** The Construction Manager at Risk shall not substitute a Subcontractor, person or entity previously selected if the Owner or Design Professional makes reasonable objection to such substitution.

### **5.3 SUBCONTRACTUAL RELATIONS**

By appropriate agreement, written where legally required for validity, the Construction Manager at Risk shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Construction Manager at Risk by terms of the Contract Documents, and to assume toward the Construction Manager at Risk all the

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

#### **5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

The PROJECT shall be developed by the CONSULTANT in accordance with applicable industry standards. The CONSULTANT shall be responsible for utilizing and maintaining current knowledge of any laws, ordinances, codes, rules, regulations, standards, guidelines, special conditions, specifications, or other mandates relevant to the PROJECT or the services to be performed.

**A. E-Verify.** The Contractor and Subcontractor must register with and use the E-verify system in accordance with Florida Statute 448.095. A Contractor and Subcontractor may not enter into a contract with the County unless each party registers with and uses the E-verify system.

If a Contractor enters a contract with a Subcontractor, the Subcontractor must provide the Contractor with an affidavit stating that the Subcontractor does not employ, contract with, or subcontract with unauthorized aliens. The Contractor must maintain a copy of the affidavit for the duration of the contract.

If the County, Contractor, or Subcontract has a good faith belief that a person or entity with which it is contracting has knowingly violated Florida Statute 448.09(1) shall immediately terminate the contract with the person or entity.

If the County has a good faith belief that a Subcontractor knowingly violated this provision, but the Contractor otherwise complied with this provision, the County will notify the Contractor and order that the Contractor immediately terminate the contract with the Subcontractor.

A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged to Section 448.095(2)(d), Florida Statute. Contractor acknowledges upon termination of this agreement by the County for violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor acknowledges that Contractor is liable for any additional costs incurred by the County as a result of termination of any contract for a violation of this section.

Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in this section, requiring the subcontracts to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any Subcontractor or Lower Tier Subcontractor with the clause set for in this section.

**5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Construction Manager at Risk to the Owner, provided that

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Construction Manager at Risk rights and obligations under the subcontract.



**5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

**6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Construction Manager at Risk claims that delay or additional cost is involved because of such action by the Owner, the Construction Manager at Risk shall make such Claim as provided in Article 15.

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

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

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

### **6.2 MUTUAL RESPONSIBILITY**

**6.2.1** The Construction Manager at Risk shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Construction Manager at Risk construction and operations with theirs as required by the Contract Documents.

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

**6.2.3** The Construction Manager at risk shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Construction Manager at Risk delays, improperly timed activities or defective construction.

**6.2.4** The Construction Manager at Risk shall promptly remedy damage the Construction Manager at Risk wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

### **6.3 OWNER'S RIGHT TO CLEAN UP**

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

## **ARTICLE 7 CHANGES IN THE WORK**

### **7.1 GENERAL**

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

**7.1.2** A Change Order shall be based upon agreement among the Owner, Construction Manager at Risk and Design Professional; a Contingency Authorization requires agreement by the Owner and Design Professional and may or may not be agreed to by the Construction Manager at Risk; an order for a minor change in the Work may be issued by the Owner's Representative.

**7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Construction Manager at Risk shall proceed promptly, unless otherwise provided in the Change Order, Contingency Authorization, or order for a minor change in the Work.

### **7.2 CHANGE ORDERS**

**7.2.1** A Change Order is a formal written instrument prepared by the Construction Manager at Risk, approved by the Design Professional, and signed by the Owner, Construction Manager at Risk and Design Professional stating their agreement upon all of the following:

1. The change in the Work;
2. The amount of the increase to the Guaranteed Maximum Price; and
3. The extent of the adjustment, if any, in the Contract Time.

A Change Order must be submitted to and approved by the Pinellas County Board of County Commissioners.

**7.2.2** The total cost of a Change Order shall be based upon the subcontractors time and materials plus a 10% overhead and profit, plus a markup by the Construction Manager at Risk consistent with and equal to the CM Fee negotiated in Article 5.1.1 of the Agreement.

### **7.3 CONTINGENCY AUTHORIZATIONS AND ALLOWANCES**

**7.3.1** A Contingency Authorization is a written authorization prepared by the Construction Manager at Risk and signed by the Owner's Representative and Design Professional, directing a change in the Work executed in the form of a Contingency Authorization, a prior written release by the Owner's Representative of contingency funds allocated in the line item in the established Guaranteed Maximum Price. The Owner's Representative may authorize the use of contingency funds without invalidating the Contract and order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Contingency Authorization line item in the Schedule of Values shall be adjusted by the Construction Manager at Risk to reflect the amount(s) of contingency use authorized by the Owner's Representative.

**7.3.2** Expenditure of allowances within the Guaranteed Maximum Price as indicated in the Schedule of Values shall be as authorized in writing by the Owner's Representative.

### **7.4 MINOR CHANGES IN THE WORK**

Minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents may be approved by the Owner's Representative. Such changes will be effected by written order signed by the Owner's Representative upon recommendation of the Design Professional and shall be binding on the Owner and Construction Manager at Risk.

## **ARTICLE 8 TIME**

### **8.1 DEFINITIONS**

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

**8.1.2** The date of commencement of the Work is the date established in the Notice To Proceed issued by the Owner.

**8.1.3** The date of Substantial Completion is the date certified by the Design Professional in accordance with Section 9.8.

**8.1.4** The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## **8.2 PROGRESS AND COMPLETION**

**8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Construction Manager at Risk confirms that the Contract Time is a reasonable period for performing the Work.

**8.2.2** The Construction Manager at Risk shall not, except by agreement or instruction of the Owner in writing, commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Construction Manager at Risk (except the Construction Manager shall not be required to provide Builder’s Risk Insurance until the date of commencement of construction of physical assets attributable to the Owner).

**8.2.3** The Construction Manager at Risk shall proceed expeditiously with sufficient forces and shall achieve Substantial Completion within the Contract Time.

## **8.3 DELAYS AND EXTENSIONS OF TIME**

**8.3.1** If the Construction Manager at Risk is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Design Professional, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Construction Manager at Risk control; or by delay authorized by the Owner, then the Construction Manager at Risk may make a Claim.

**8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

# **ARTICLE 9 PAYMENTS AND COMPLETION**

## **9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Construction Manager at Risk for performance of the Work under the Contract Documents.

## **9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Construction Manager at Risk shall include in the Guaranteed Maximum Price package submitted to Owner a Schedule of Values allocating the entire Contract Sum to the various portions of the Work as previously approved by the Owner and Design Professional. This Schedule of Values, once approved, shall be used as a basis for reviewing the Construction Manager at Risk Applications for Payment (the percentage of completion of each individual line item in the Schedule of Values shall be listed and submitted in each Application for Payment).

## **9.3 APPLICATIONS FOR PAYMENT**

**9.3.1** The Construction Manager at Risk shall submit to the Design Professional an Application for Payment prepared on the basis of the approved Schedule of Values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and shall reflect retainage if provided for in the Contract Documents.

**9.3.2** As provided in Section 7.3, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Contingency Authorizations.

**9.3.3** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner in the Contract Documents, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Construction Manager at Risk with procedures satisfactory to the Owner to establish the Owner’s title to such materials and equipment or otherwise protect the Owner’s interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**9.3.4** The Construction Manager at Risk warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Construction Manager at Risk further warrants by virtue of an executed Release and Affidavit (Exhibit E) that, upon submittal of an Application for Payment, all Work for which

Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Construction Manager at Risk knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Construction Manager at Risk, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **9.4 CERTIFICATES FOR PAYMENT**

**9.4.1** Each of the Construction Manager at Risk Applications for Payment shall be submitted to the Design Professional. All applications for Payment shall be processed in accordance with the Local Government Prompt Payment Act, Section 218.70, et. seq. of the Florida State Statutes.

**9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the Owner, based on the Design Professional's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Design Professional's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Design Professional. The issuance of a Certificate for Payment will further constitute a representation that the Construction Manager at Risk is entitled to payment in the amount certified.

#### **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

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

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Construction Manager at Risk;
3. failure of the Construction Manager at Risk to make payments properly to Subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to the Owner or a separate contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. repeated failure to carry out the Work in accordance with the Contract Documents.

**9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**9.5.3** If the Design Professional withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Construction Manager at Risk and to any Subcontractor or material or equipment suppliers to whom the Construction Manager at Risk failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Design Professional and the Design Professional will reflect such payment on the next Certificate for Payment.

#### **9.6 PROGRESS PAYMENTS**

**9.6.1** After the Design Professional has issued a Certificate for Payment, the Owner shall make payment in accordance with the Local Government Prompt Payment Act, Section 218.70, et.seq. of the Florida State Statutes.

**9.6.2** The Construction Manager at Risk shall pay each Subcontractor no later than seven (7) days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Construction Manager at Risk on account of the Subcontractor's portion of the Work. The

Construction Manager at Risk shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**9.6.3** The Design Professional will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Construction Manager at Risk and action taken thereon by the Design Professional and Owner on account of portions of the Work done by such Subcontractor.

**9.6.4** The Owner has the right to request written evidence from the Construction Manager at Risk that the Construction Manager at Risk has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Construction Manager at Risk for subcontracted Work. If the Construction Manager at Risk fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Design Professional shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

**9.6.5** Construction Manager at Risk payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

## **9.7 SUBSTANTIAL COMPLETION**

**9.7.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and a Certificate of Occupancy (CO) or a TCO which may be awarded from the jurisdiction responsible to issue such CO or TCO as described in Section 6.5.2 in the Agreement has been obtained by the Construction Manager at Risk and the Owner can occupy or utilize the Work for its intended use.

**9.7.2** When the Construction Manager at Risk considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager at Risk shall prepare and submit to the Design Professional a "Punch List." The Punch List is a comprehensive list of items, required to make the Work complete, satisfactory and acceptable, to be completed or corrected prior to final payment. Failure to include an item on such Punch List does not alter the responsibility of the Construction Manager at Risk to complete all Work in accordance with the Contract Documents. The Punch List shall be reviewed by the Design Professional and Owner's Representative shall accept, modify or reject the Punch List within the timeframes provided by Florida State Statutes, Section 218.735(7)(a). Construction Manager at Risk shall be available to accompany the Design Professional and the Owner's Representative on a walk-through of the entire Project, or phase of the Project determined by the Construction Manager at Risk to be Substantially Complete, within five (5) days of the issuance of the certificate of substantial completion, at such time during regular working hours designated by the Design Professional. In the event that the Construction Manager at Risk is not available, the ability to accompany the Design Professional and the Owner's Representative shall be deemed waived. The purpose of the walkthrough is to allow discussion, clarification or explanation relative to items which may become part of the Punch List as it is developed or modified.

**9.7.3** Upon receipt of the Construction Manager at Risk list and a Certificate of Occupancy or a TCO from the Building Department having jurisdiction over the Project, the Design Professional will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design Professional's inspection discloses any item, whether or not included on the Construction Manager at Risk list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, Design Professional shall notify Construction Manager at Risk in writing giving the reasons therefore. The Construction Manager at Risk shall, before issuance of the Certificate of Substantial Completion, complete or correct all items not sufficiently complete, upon such notification by the Design Professional. In such case, the Construction Manager at Risk shall then submit a request for another inspection by the Design Professional to determine Substantial Completion. In such case, Construction Manager at Risk shall pay the costs of all additional Substantial Completion inspections.

The Punch List shall be completed by the Design Professional within the timeframes provided by Florida State Statute, Section 218.735(7)(a). Construction Manager at Risk shall be available to accompany the Design Professional on a walk-through of the entire Project, or phase of the Project determined by the Construction Manager at Risk to be Substantially Complete, within five (5) days of the issuance of the certificate of substantial completion at such time during regular working hours designated by the Design Professional. In the event that the Construction Manager at Risk is not available, the ability to accompany the Design Professional shall be deemed waived. The purpose of the

walkthrough is to allow discussion, clarification or explanation relative to items which may become part of the Punch List as it is developed.

**9.7.4** When the Work or designated portion thereof is substantially complete and a Certificate of Occupancy or a TCO has been issued, the Design Professional will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and shall fix the time within which the Construction Manager at Risk shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**9.7.5** The Certificate of Occupancy and the Certificate of Substantial Completion shall be submitted to the Owner and Construction Manager at Risk for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **9.8 PARTIAL OCCUPANCY OR USE**

**9.8.1** Upon Substantial Completion, the Owner may occupy or use any portion of the Work, provided such occupancy or use is authorized by public authorities having jurisdiction over the Project (through a Certificate of Occupancy). When the Construction Manager at Risk considers a portion substantially complete, the Construction Manager shall prepare and submit a list to the Design Professional as provided under Section 9.8.2. Consent of the Construction Manager at Risk to partial occupancy or use shall not be unreasonably withheld.

**9.8.2** Immediately prior to such partial occupancy or use, the Owner, Construction Manager at Risk and Design Professional shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

## **9.9 FINAL COMPLETION AND FINAL PAYMENT**

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

**9.9.2** Neither final payment nor any remaining retained percentage shall become due until the Construction Manager at Risk submits to the Design Professional (1) a properly executed and notarized final release (conditioned only upon receipt of final payment) in the form of the Release and Affidavit attached to the Agreement as Exhibit E, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner, (3) a written statement that the Construction Manager at Risk knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) a duly executed copy of the surety's consent to final payment, and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Construction Manager at Risk may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Construction Manager at Risk shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**9.9.4** The making of final payment shall not constitute a waiver of Claims by the Owner.

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

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Construction Manager at Risk shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **10.2 SAFETY OF PERSONS AND PROPERTY**

**10.2.1** The Construction Manager at Risk shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

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

**10.2.2** The Construction Manager at Risk shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

**10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager at Risk shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**10.2.5** The Construction Manager at Risk shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Construction Manager at Risk, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Construction Manager at Risk is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Design Professional or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Construction Manager at Risk. The foregoing obligations of the Construction Manager at Risk are in addition to the Construction Manager at Risk obligations under Section 3.18.

**10.2.6** The Construction Manager at Risk shall designate a responsible member of the Construction Manager at Risk organization at the site whose duty shall be the prevention of accidents. This person shall be the Construction Manager at Risk superintendent unless otherwise designated by the Construction Manager at Risk in writing to the Owner and Design Professional.

**10.2.7** The Construction Manager at Risk shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

### **10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### **10.3 HAZARDOUS MATERIALS**

**10.3.1** The Construction Manager at Risk is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Construction Manager at Risk encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Construction Manager at Risk, the Construction Manager at Risk shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Design Professional in writing.

**10.3.2** Upon receipt of the Construction Manager at Risk written notice, the Owner shall authorize the services of an environmental consultant or licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager at Risk and, in the event such material or substance is found to be present, to cause it to be rendered harmless, which may include termination of the Project. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Construction Manager at Risk and Design Professional the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Construction Manager at Risk and the Design Professional will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Construction Manager at Risk or Design Professional has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Construction Manager at Risk and the Design Professional have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area may resume upon written agreement of the Owner and Construction Manager at Risk. Within the limits of Contingency Authorization, the Owner shall reimburse the Construction Manager at Risk reasonable additional costs of shut-down, delay and start-up, and by Change Order the Contract Time shall be extended appropriately in accordance with Article 7.

**10.3.3** The Owner shall not be responsible under this Section 10.3 for materials or substances the Construction Manager at Risk brings to the site. The Owner shall not be responsible for the Construction Manager at Risk fault or negligence in the use and handling of materials or substances required by the Contract Documents.

**10.3.4** The Construction Manager at Risk shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Construction Manager at Risk brings to the site and negligently handles, or (2) where the Construction Manager at Risk fails to perform its obligations under Section 10.3.1.

### **10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Construction Manager at Risk shall act, at the Construction Manager at Risk discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Construction Manager at Risk on account of an emergency shall be determined as provided in Article 15 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **11.1 CONSTRUCTION MANAGER AT RISK INSURANCE**

**11.1.1** Consistent with paragraph 8.1 of the Agreement and during the term of this Agreement, the Construction Manager at Risk shall provide, pay for, and maintain, with companies satisfactory to the Owner, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies registered with the State of Florida. Promptly after written Notice of Award is issued by the Owner, the insurance coverage and limits required must be evidenced by properly executed Certificates of Insurance on the form which is attached hereto and made part hereof as Exhibit K. In addition, certified, true and exact copies of all insurance policies required shall be provided to the Owner upon request. These Certificates and policies shall contain provisions that ten (10) days written notice by registered or certified mail shall be given the Owner of any cancellation, intent not to renew, or reduction in the policies' coverage, except in the application of the Aggregate Limits Provisions. The Construction Manager at Risk also shall notify the Owner, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverage or limits received by the Construction Manager at Risk from its insurer, and nothing contained herein shall relieve the Construction Manager at Risk of this requirement to provide notice.



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

1. The term “The Board of County Commissioners for Pinellas County, Florida” shall include Pinellas County, Florida, a political subdivision of the State of Florida, and all Authorities, Boards, Bureaus, Commissions, Divisions, Departments, and offices thereof and individual members and employees thereof in their official capacity, and/or while acting on behalf of either Pinellas County, Florida or the Board of County Commissioners for Pinellas County, Florida.
2. All insurance policies, other than the Professional Liability policy and the Workers Compensation policy provided by the Construction Manager at Risk to meet the requirements of this Agreement shall name the Board of County Commissioners for Pinellas County, Florida, as that name is defined in subparagraph 11.1.2.1 above, as an additional named insured as to the operations of the Construction Manager at Risk under the Contract Documents and shall contain severability of interest provisions.
3. Companies issuing the insurance policy or policies shall have no recourse against the Owner for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of the Construction Manager at Risk.
4. All insurance coverages of the Construction Manager at Risk shall be primary to any insurance or self-insurance program carried by the Owner applicable to this Project, and the “Other Insurance” provisions of any policies obtained by the Construction Manager at Risk shall not apply to any insurance or self-insurance program carried by the Owner applicable to this Project.

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

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

**11.1.5** Before starting and until acceptance of the work by the Owner, the Construction Manager at Risk shall procure and maintain insurance of the types and to the limits specified in Article 8 of the Agreement between Pinellas County and the Construction Manager at Risk. The Construction Manager at Risk shall require each of its subcontractors to procure and maintain, until the completion of that subcontractor’s work, insurance of the types and to the limits specified in Article 8, unless such insurance requirement for the subcontractor is expressly waived in writing by the Owner.

**11.1.6** If any insurance provided pursuant to this Agreement expires prior to the completion of the Work, renewal Certificates of Insurance be furnished to the Owner fifteen (15) days prior to the date of expiration.

**11.1.7** Should at any time the Construction Manager at Risk not maintain the insurance coverages required in this Agreement, the Owner may cancel the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the Construction Manager at Risk for such coverages purchased. The Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of the Owner to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

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

**11.1.9** The Owner shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager at Risk and/or subcontractor providing such insurance.

## **11.2 WAIVERS OF SUBROGATION**

**11.2.1** The Construction Manager at Risk shall waive all rights against the Owner for damages caused by perils covered by insurance provided under Article 8 to the extent covered by such insurance. The Construction Manager at Risk shall require similar waivers from all subcontractors and their sub-subcontractors.

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

### **11.3 INDEMNIFICATION**

To the full extent permitted by Florida law, the Construction Manager at Risk does hereby agree to indemnify, defend, and save harmless the Owner and members of its Board of County Commissioners, its officers, and employees from and against all losses and all claims, demands, payments, suits, actions, recoveries, expenses, attorney's fees, and judgments of every nature and description, including claims for property damage and claims for injury to or death of persons, or on account of, any claim or amounts recovered under the "Workers' Compensation Law" or of any other laws, bylaws, ordinances, orders or decrees brought or recovered against the Owner by reason or any act of negligence or omission of the Construction Manager at Risk, its agents, or employees, or by any person, firm, or corporation, or to whom any portion of the Work is subcontracted by the Construction Manager at Risk or resulting from use by the Construction Manager at Risk, or by any one for whom the Construction Manager at Risk is legally liable, of any materials, tools, machinery, or other property of the Owner. The Construction Manager at Risk agrees that the first ten dollars (\$10.00) of compensation received under this contract represents specific consideration for this indemnification obligation.

### **11.4 PROPERTY INSURANCE (BUILDER'S RISK INSURANCE OR INSTALLATION FLOATER COVERAGE AS APPLICABLE)**

**11.4.1** Builder's Risk Insurance, on an all risk completed value form, shall be provided by the Construction Manager at Risk on the Project for those portions of the Guaranteed Maximum Price (GMP) devoted specifically to materials, supplies, equipment, and constructed facilities until such time as the County assumes ownership of the facilities by an official and formal sign-off, with the Owner, Construction Manager at Risk, and Design Professional as named insures and including the interests of the subcontractors and sub-subcontractors as their interests may appear.

**11.4.1.1** Builder's Risk Insurance shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design Professional's and Construction Manager at Risk services and expenses required as a result of such insured loss. The Owner, at its discretion, may require that the perils of earthquake, sinkhole and flood be added to the Builder's Risk policy. If added, the amounts of coverage may be less than the Contract Agreement.

**11.4.1.2** Loss, if any, under this coverage shall be adjusted with the Owner with the cooperation of the Construction Manager at Risk with the claim check made payable to the Owner for its own interest and the interests of the Construction Manager at Risk and all other insured parties.

**11.4.1.3** Any deductibles under the Builder's Risk policy shall be the sole responsibility of the Construction Manager at Risk. Will it be acceptable to include separate contingency in the GMP to account for the required builder's risk deductible and/or create language that allows for use of contingency in the event of a claim against builder's risk?

**11.4.1.4** This Builder's Risk Insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**11.4.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing Builder's Risk Insurance have consented to such partial occupancy or use by endorsement or otherwise. The Construction Manager at Risk shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**11.4.1.6** Builder's Risk Insurance shall be incorporated into the Agreement at the time the Guaranteed Maximum Price (GMP) is approved, and shall become effective within five (5) business days following the execution of the Guaranteed Maximum Price Amendment by the Owner. The Owner shall have the right to review the Builder's Risk Insurance proposed by the Construction Manager at Risk to verify the cost, coverage, and carrier.

**11.4.1.7** On all renovation projects in existing facilities, Installation Floater Coverage shall be provided by the Construction Manager at Risk on the Project for those portions of the Guaranteed Maximum Price (GMP) devoted specifically to materials, supplies, equipment, and constructed facilities until such time as the County assumes ownership of the facilities by an official and formal sign-off, with the Owner, Construction Manager at Risk, and

Design Professional as named insures and including the interests of the subcontractors and sub-subcontractors as their interests may appear.

**11.4.2** The Construction Manager at Risk shall be entitled to request approval from the Owner to include insurance for risks in the policy other than those described herein.

**11.4.3** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Sections 11.2 and 11.3 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

## **11.5 PERFORMANCE BOND AND PAYMENT BOND**

**11.5.1** Consistent with 8.3.1 of the Agreement and within five (5) business days after the Guaranteed Maximum Price Amendment is approved and executed by both parties, the Construction Manager at Risk shall provide the Owner with Performance and Payment Bonds in the form prescribed in Exhibit C and Exhibit D, in the amount of 100% of the Guaranteed Maximum Price, the costs of which are to be paid by the Construction Manager at Risk. The Performance and Payment Bonds shall be underwritten by a surety, must comply with the following provisions, and must be otherwise acceptable to the Owner:

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

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

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

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

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

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

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

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

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

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

**11.5.2** Subcontractors over \$100,000.00 will be bonded in a form acceptable to the Owner. The Owner shall be identified as an obligee. The Subcontractor Bonds will be acceptable to the Owner only if the following are met: The Surety Company (i) is licensed to do business in the State of Florida; (ii) holds a certificate of authority authorizing it to write surety bonds in this state; (iii) has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued; (iv) is otherwise in compliance with the provisions of the Florida Insurance Code; (v) holds a currently valid certificate of authority issued by the United States Department of Treasury under 31 U.S.C. §§9304-9308. Is subcontractor default insurance (in lieu of individual performance and payment bonds) acceptable to the County?

**11.5.3** If the surety for any bond furnished by the Construction Manager at Risk 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, the Construction Manager at Risk shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the Owner's approval.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **12.1 UNCOVERING OF WORK**

**12.1.1** If a portion of the Work is covered contrary to the Design Professional's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Design Professional, be uncovered for the Design Professional's examination and be replaced at the Construction Manager at Risk expense without change in the Contract Time.

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

### **12.2 CORRECTION OF WORK**

#### **12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Construction Manager at Risk shall promptly correct Work rejected by the Design Professional or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Design Professional's services and expenses made necessary thereby, shall be at the Construction Manager at Risk expense.

#### **12.2.2 AFTER SUBSTANTIAL COMPLETION**

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

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

**12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Construction Manager at Risk pursuant to this Section 12.2.

**12.2.3** The Construction Manager at Risk shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Construction Manager at Risk nor accepted by the Owner.

**12.2.4** The Construction Manager at Risk shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Construction Manager at Risk correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

### **12.3 ACCEPTANCE OF NONCONFORMING WORK**

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **13.1 GOVERNING LAW**

The Contract shall be governed by the law of the State of Florida.

### **13.2 SUCCESSORS AND ASSIGNS**

**13.2.1** The Owner and Construction Manager at Risk respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. If the Construction Manager at Risk does, with approval of the Owner, assign this Contract or any part thereof, it shall require that its assignee be bound to it and to assume toward the Construction Manager at Risk all of the obligations and responsibilities that the Construction Manager at Risk has assumed toward the Owner.

### **13.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the Owner's Representative or the Construction Manager at Risk; or if mailed to the respective addresses below:

For Owner: **INSERT ADDRESS**

For Construction Manager at Risk: **INSERT ADDRESS**

### **13.4 RIGHTS AND REMEDIES**

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

**13.4.2** No action or failure to act by the Owner or Construction Manager at Risk shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### 13.5 TESTS AND INSPECTIONS

**13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Construction Manager at Risk shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Construction Manager at Risk shall give the Design Professional forty-eight (48) hours prior notice of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Construction Manager at Risk.

**13.5.2** If the Design Professional, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Design Professional will, upon written authorization from the Owner, instruct the Construction Manager at Risk to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Construction Manager at Risk shall give forty-eight (48) hours prior notice to the Design Professional of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

**13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Design Professional's services and expenses shall be at the Construction Manager at Risk expense.

**13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Construction Manager at Risk and promptly delivered to the Design Professional.

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

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

### 13.6 INTEREST

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

### 13.7 PUBLIC RECORD CONTRACTORS DUTY

**If the contractor 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 Pinellas County Board of County Commissioners, Purchasing Department, Operations Manager custodian of public records at 727-464-3311, [purchase@pinellascounty.org](mailto:purchase@pinellascounty.org), Pinellas County Government, Purchasing Department, Operations Manager, 400 S. Ft. Harrison Ave, 6<sup>th</sup> Floor, Clearwater, FL 33756.**

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### 14.1 TERMINATION BY THE OWNER FOR CAUSE

**14.1.1** The Construction Manager at Risk shall be considered in material default of the Contract and such default shall be considered cause for the Owner to terminate the Contract, in whole or in part, as further set forth in this Article, if the Construction Manager at Risk

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 the Owner or the 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; or
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.

**14.1.2** If the Owner determines that the Construction Manager at Risk is in default under this Contract, the Owner shall notify the Construction Manager at Risk in writing of the Construction Manager at Risk default(s). If the Owner determines that the Construction Manager at Risk has not remedied and cured the default(s) within seven (7) calendar days following receipt by the Construction Manager at Risk of said written notice, then the Owner, at its option, without releasing or waiving its rights and remedies against the Construction Manager at Risk Sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate the Construction Manager at Risk 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 the Construction Manager at Risk, take assignments of any of the Construction Manager at Risk subcontracts and purchase orders that the Owner may designate, and complete all or any portion of the Construction Manager at Risk Work by whatever means, method, or agency which the Owner, in its sole discretion, may choose.

**14.1.3** If the Owner deems any of the foregoing remedies necessary, the Construction Manager at Risk agrees that it 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 the Design Professional fees) or damages incurred by the 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, the Construction Manager at Risk agrees to pay promptly to the Owner on demand the full amount of such excess, including costs of collection, and interest thereon at the maximum legal rate of interest paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures, and damages incurred by the Owner to complete the Work, the Construction Manager at Risk shall not be entitled to any portion of such excess, except for the unpaid portion of the Construction Manager At Risk Fee earned and the Cost of Work incurred prior to the Construction Manager at Risk right to continue performance under this Contract being terminated. Any amounts to be paid to the Owner by the Construction Manager at Risk pursuant to this paragraph 14.2.3 shall be certified by the Design Professional, upon application, and this obligation for payment shall survive termination of the contract.

**14.1.4** The liability of the Construction Manager at Risk hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses uncured, damages sustained, and obligations assumed by the 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 therefore 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 the Owner has exercised its right to terminate due to the Construction Manager at Risk default, the Construction Manager at Risk shall be prohibited from bidding or otherwise seeking additional work from the Owner in accordance with the Owner's then current debarment policy.

**14.1.5** If, after notice of termination of the Construction Manager at Risk right to proceed pursuant to this Article, it is determined for any reason that the Construction Manager at Risk was not in default, or that its default was excusable, or that the Owner is not entitled to the remedies against the Construction Manager at Risk provided herein, then such termination shall be deemed a termination for the Owner's convenience and the Construction Manager at Risk remedies against the Owner shall be the same as and limited to those afforded the Construction Manager at Risk under Section 14.4.1 below.

## **14.2 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**14.2.1** The Owner shall have the right to suspend all or any portions of the Work upon giving the Construction Manager at Risk two (2) calendar days prior written notice of such suspension. If all or any portion of the Work is so suspended, the Construction Manager at Risk 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 the Construction Manager at Risk be entitled to any additional compensation or damages except as otherwise expressly provided for in the Contract

Documents. In the event that a suspension continues for a period exceeding thirty (30) days, Construction Manager at Risk may, at its option, terminate the Contract as to the portion of Work suspended, or elect to negotiate a Change Order.

### **14.3 TERMINATION BY THE OWNER FOR CONVENIENCE**

**14.3.1** The Owner shall have the right to terminate this Contract without cause upon seven (7) calendar days written notice to the Construction Manager at Risk. In the event of such termination for convenience, the Construction Manager at Risk recovery against the 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 the Construction Manager at Risk shall not be entitled to any other or further recovery against the Owner, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

In the event that conditions arise, such as lack of available funds, which in the Owner's opinion make it advisable and in the public interest to terminate this Agreement, it may do so upon written notice.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **15.1 CLAIMS**

#### **15.1.1 DEFINITION**

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

#### **15.1.2 NOTICE OF CLAIMS**

Claims by either the Owner or Construction Manager at Risk must be initiated by separate and specific written notice to the other party and to the Design Professional within seven (7) calendar days after the first day of the event giving rise to such claim or after the claimant first recognizes the condition giving rise to the Claim, whichever is later. If this initial written notice is not given, then the claimant shall be deemed to have waived the Claim. The claimant shall submit written supporting data to the other party and the Design Professional within thirty (30) calendar days after the occurrence (or date when the claimant first noticed the occurrence), unless the other party grants additional time in writing, or else the claimant shall be deemed to have waived the Claim. All Claims shall be priced in accordance with the provisions of Article 7 hereof.

15.1.2.2 Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fire, floods, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any government authority, Federal, State or Local Declared State of Emergency, Federal, State or Local Disaster Declarations, and pandemic or epidemic related delays, specifically including any delays caused by Coronavirus (COVID-19), including any orders of curfew, stay-at-home, or shelter-in-place issued by Federal, State or Local authorities, effects on material availability or other transportation restrictions; provided, however, that the party so affected shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either party shall provide the other party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure. The parties shall mutually seek a resolution of the delay or the failure to perform as noted above.

#### **15.1.3 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Construction Manager at Risk shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

#### **15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Construction Manager at Risk wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.



#### **15.1.5 CLAIMS FOR ADDITIONAL TIME**

Claims for additional time less than thirty (30) days are considered to be de minimus and part of the originally negotiated Contract schedule or GMP Amendment, and will not be considered.

**15.1.5.1** If the Construction Manager at Risk wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Construction Manager at Risk Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

#### **15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Construction Manager at Risk and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Construction Manager at Risk for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **15.2 ALTERNATIVE DISPUTE RESOLUTION**

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. The parties hereby agree that the agreed upon mediator shall be selected from one of the following: James A. Case (727) 443-6513, Roger Larson (727) 461-1818, or Andrew Rodnite (727) 787-5919. Should James A. Case, Roger Larson, or Andrew Rodnite be unable to act as mediator, the parties shall agree on a substitute mediator. 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 State Statutes, Section 44.102.

#### **15.3 VENUE**

Any litigation between Owner and Construction Manager at Risk (which term for the purposes of this subparagraph shall include Construction Manager at Risk 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 Owner and Construction Manager at Risk 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 Owner and Construction Manager at Risk shall lie and be only in the appropriate State courts of the State of Florida's Sixth Judicial Circuit in and for Pinellas County, Florida. Construction Manager at Risk consents and submits to the exclusive 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. Owner and Construction Manager at Risk EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY REGARDING ANY SUCH LITIGATION.

#### **15.4 SURVIVAL OF ARTICLE**

This Article shall survive completion or termination of this Agreement.

**EXHIBIT B**  
**SPECIAL CONDITIONS**

**N/A**

**EXHIBIT C**  
**FORM OF PAYMENT AND PERFORMANCE BOND**

The exact language in Exhibit C must be used when submitting bonds

**BOND NO.** \_\_\_\_\_

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_, as Principal,  
and \_\_\_\_\_, as Surety,  
Located at: \_\_\_\_\_

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
( Phone Number)

Are held and firmly bound unto Pinellas County, Florida, as Obligee in the sum of

\_\_\_\_\_  
DOLLARS \$ \_\_\_\_\_ For the payment whereof we bind ourselves,  
our heirs, executors, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into an Agreement with Obligee for **Bid Title: Construction Manager at Risk for Jail Security and Entry Center, Bid No: 21-0704-NC(PLU)** in accordance with Plans and Specifications, which Agreement is incorporated by reference and made a part hereof, and is referred to as the Agreement.

THE CONDITIONS OF THIS BOND is that if Principal:

1. Performs the Agreement at the times and in the manner prescribed in the Agreement; and
2. Pays Obligee any and all losses, damages, costs and attorneys' fees, including appellate proceedings, that Obligee sustains because of any default by Principal under the Agreement, including, but not limited to, all delay damages, whether liquidated or actual, incurred by  
Obligee; and
3. Performs the guarantee of all Work and materials furnished under the Agreement for the time specified in the Agreement; then this bond is void; otherwise it remains in full force.

Any changes in or under the Agreement and compliance or noncompliance with any formalities connected with the Agreement or the changes do not affect Surety's obligations under this bond.

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

This instrument shall be construed in all respects as a statutory bond. It is expressly understood the time provisions and statute of limitation under Section 255.05 Florida Statutes, shall apply to this bond.

**BOND NO.** \_\_\_\_\_

By execution of this bond, the Surety acknowledges that is has read the Surety qualifications and obligations imposed by the construction Agreement and hereby satisfies those conditions.

IN WITNESS WHEREOF, the above bound parties have executed this instrument this

day of

,20\_\_\_\_, the name of each party being affixed and these presents duly signed

by its undersigned representative, pursuant to authority of its governing body.

PRINCIPAL:

(Authorized Signature)

(Print Name)

(Title)

(Business Address)

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

The foregoing instrument was acknowledged before me this

by

of

, a

Corporation, on behalf of the Corporation. He/She is personally known to me or has produced Florida

Driver's License as identification and who did (did not) take an oath.

Notary:

Print Name:

Commission Number:

My Commission Expires:

**BOND NO.** \_\_\_\_\_

SURETY:

(Print)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Signature As Attorney In Fact)

\_\_\_\_\_  
(Attach Power of Attorney)

\_\_\_\_\_  
Witness as to Attorney In Fact

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Telephone Number)

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

The foregoing instrument was acknowledged before me this

\_\_\_\_\_  
By

\_\_\_\_\_  
Of \_\_\_\_\_, a

\_\_\_\_\_  
Corporation, on behalf of the Corporation. He/She is personally known to me or has produced Florida Driver's

License as identification and who did (did not) take an oath.

Notary:

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

Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
**BOND NO. \_\_\_\_\_**

**PAYMENT BOND**

BY THIS BOND, We

(hereinafter called the ("Principal" and \_\_\_\_\_

(hereinafter called the ("Surety"), located at \_\_\_\_\_

\_\_\_\_\_  
A surety insurer chartered and existing under the laws of the state of \_\_\_\_\_

and authorized to do Business in the State of Florida, are held and firmly bound unto Pinellas County

(hereinafter called the "County") in the sum of

\_\_\_\_\_

DOLLARS                      \$

For payment of which we bond ourselves, our heirs, our personal representatives, our successors and our assignees,  
jointly and severally.

WHEREAS, Principal and County have reached a mutual agreement (hereinafter referred to as the "Agreement") for

**Bid Title: Construction Manager at Risk for Jail Security and Entry Center, Bid No: 21-0704-NC(PLU)** said Agreement being made a part of this Bond by this reference.

NOW, THEREFORE, THE CONDITION OF THIS BOND IS THAT IF THE PRINCIPAL:

- 1. Shall promptly make payments to all claimants as defined in section 255.05(l), Florida Statutes, Supplying the Principal with labor, materials or supplies, as used directly or indirectly by the Principal in the prosecution of the Work provided for in the Agreement and;
- 2. Shall pay the County for all losses, damages, expenses, costs and attorneys' fees, including appellate proceedings, that the County sustains because of a default by the Principal in contravention to the Agreement in regard to payment for such labor, materials, or supplies furnished to the Principal; then this bond is void; otherwise this Bond remains in full force and effect.

BE IT FURTHER KNOWN:

- 1. Any changes in or under the Agreement and compliance or noncompliance with any formalities Connected with the said Agreement or alterations, which may be made in the terms of said Agreement, or in the Work to be done under it, or the giving by the County of any extension of time for the performance of the said Agreement, or any other forbearance on the part of the County or Principal to the other, shall not in any way release the Principal and the Surety, or either of them, their heirs, personal representatives, successors or assigns from liability hereunder, notice to the Surety of any such changes, alterations, extensions or forbearance being hereby waived.
- 2. Certain claimants seeking the protection of this Bond must timely comply with the strict Requirements set forth in Section 255.05, Florida Statutes, and as otherwise provided by law.
- 3. The Provisions of this bond are subject to the limitation of Section 255.05(2).

BOND NO. \_\_\_\_\_

By execution of this bond, the Surety acknowledges that it has read the Surety qualifications and obligations imposed by the construction Agreement and hereby satisfies those conditions.

THIS BOND DATE THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_  
(the date of issue by the Surety or by the Surety's agent and the date of such agent's power-or-attorney)

PRINCIPAL:

\_\_\_\_\_

(Authorized Signature)

\_\_\_\_\_

(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)

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

The foregoing instrument was acknowledged before me this

\_\_\_\_\_  
By

\_\_\_\_\_  
Of \_\_\_\_\_, a

\_\_\_\_\_  
Corporation, on behalf of the Corporation. He/She is personally known to me or has produced Florida Driver's

License as identification and who did (did not) take an oath.

Notary:

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

Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_

**BOND NO.** \_\_\_\_\_

SURETY:

\_\_\_\_\_  
(Print)

\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Signature As Attorney In Fact)

(Attach Power of Attorney)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Telephone Number)

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

The foregoing instrument was acknowledged before me this

By \_\_\_\_\_

Of \_\_\_\_\_, a \_\_\_\_\_

Corporation, on behalf of the Corporation. He/She is personally known to me or has produced Florida Driver's

License as identification and who did (did not) take an oath.

Notary:

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

Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_



**EXHIBIT E**

**RELEASE AND AFFIDAVIT**

STATE OF FLORIDA

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

Before me, the undersigned authority, personally

appeared

\_\_\_\_\_ who after being duly sworn, deposes and says:

All charges for labor, materials, supplies, lands, licenses and other expenses arising from

**Bid Title: Construction Manager at Risk for Jail Security and Entry Center, Bid No: 21-0704-NC(PLU)** for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid or will be fully satisfied and paid promptly upon receipt of payment by the Contractor. The Contractor will fully indemnify, defend and save harmless the County from all demands, suits, actions, claims of lien or other charges filed or asserted against the County in connection with matters certified to herein.

On behalf of itself and its subcontractors, suppliers, material men, successors and assigns, the Contractor releases and waives all claims, demands, damages, costs and expenses, against the Board of County Commissioners of Pinellas County, relating in any way to the performance or payment of the above-numbered Agreement, for the period from the date of execution of the Agreement through and including the date of acceptance of Final Payment.

The Contractor is aware of contractual provisions for warranties and guarantees contained in the General Conditions of the above numbered Agreement, and acknowledges that those provisions shall have the same force and effect as if this Affidavit had not been executed, and understands that the County's remedies are not limited by same but are in addition to any other remedies provided by law.

This Affidavit is given in connection with the Contractors application for Final Payment.

FURTHER AFFIANT SAYETH NAUGHT.

\_\_\_\_\_  
(Affiant)

STATE OF FLORIDA - COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this

By \_\_\_\_\_ who is personally known to me and/or has produced

\_\_\_\_\_ As identification.

\_\_\_\_\_  
Signature of Person Taking Acknowledgement



## CONSTRUCTION MANAGER AT RISK APPLICATION FOR PAYMENT

**Bid Title: Construction Manager at Risk for Jail Security and Entry Center Bid No: 21-0704-NC(PLU)**

**Pinellas County Department**

**Payment Period From:** \_\_\_\_\_ **to** \_\_\_\_\_

## PAYMENT SUMMARY

**for the period from \_\_\_\_\_ to \_\_\_\_\_**

**APPLICATION FOR PAYMENT APPROVED BY:**

Pinellas County \_\_\_\_\_ (Dept) Engineering Project Manager

## Pinellas County Public Works

Director of \_\_\_\_\_ (Dept)

Date \_\_\_\_\_

**EXHIBIT G**

**CHANGE ORDER**

**APPENDIX 2 – SAMPLE CHANGE ORDER:**

**Bid Title: Construction Manager at Risk for Jail Security and Entry Center  
Bid No: 21-0704-NC(PLU)**

**SAMPLE CHANGE ORDER**  
PINELLAS COUNTY PURCHASING DEPARTMENT  
CLEARWATER, FLORIDA  
CHANGE ORDER NO. \_\_\_\_\_

FISCAL NO. \_\_\_\_\_

ACCOUNT NO. \_\_\_\_\_

TO \_\_\_\_\_  
FOR \_\_\_\_\_  
IN CONNECTION WITH \_\_\_\_\_

Total Agreement	\$ _____
Addition	\$ _____
New Total	\$ _____
Deletion	\$ _____
New Total Agreement	\$ _____

Execution by the contractor of this Change Order shall be considered a waiver of all claims or request for additional time or compensation for any activities prior to time of execution related to items included in the Change Order. The contractor also acknowledges that payment authorized by this Change Order represents full and complete compensation for labor, materials, incidental expenses, overhead profit, impact cost, and time associated with this Work. Claim procedures are outlined in the Contract documents.

\_\_\_\_\_  
Investigator

APPROVED AS TO FORM:  
OFFICE OF COUNTY ATTORNEY

By \_\_\_\_\_  
Attorney

\_\_\_\_\_  
Director of Purchasing  
Accepted this \_\_\_\_\_ day of  
\_\_\_\_\_20 \_\_\_\_\_

PINELLAS COUNTY  
BOARD OF COUNTY COMMISSIONERS

By \_\_\_\_\_  
Chairman

Attest: KEN BURKE, CLERK  
By \_\_\_\_\_  
Deputy Clerk

Use Authorized Signatures Only

\_\_\_\_\_  
Company

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

\_\_\_\_\_  
Witness

## EXHIBIT H

### CONSTRUCTION MANAGER AT RISK STAFFING SCHEDULE

#### I. Pre-Construction Phase Services:

<u>Name</u>	<u>Title/Position</u>	<u>Company Affiliation</u>	<u>% Assigned to Project</u>
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#### II Construction Phase Services:

<u>Name</u>	<u>Title/Position</u>	<u>Company Affiliation</u>	<u>% Assigned to Project</u>
-------------	-----------------------	----------------------------	----------------------------------

**EXHIBIT I**

**GMP AMENDMENT TO AGREEMENT BETWEEN  
OWNER AND CONSTRUCTION MANAGER AT RISK**

**AMENDMENT NO. 1 TO AGREEMENT BETWEEN OWNER  
AND CONSTRUCTION MANAGER AT RISK FOR \_\_\_\_\_  
AGREEMENT NO. \_\_\_\_\_**

Pursuant to Sections 2.2 6.1, and 6.2 of the Agreement, dated \_\_\_\_\_, between The County Commissioners of Pinellas County, Florida (“Owner”) and \_\_\_\_\_ (“Construction Manager at Risk”), with respect to the construction of the Owner’s \_\_\_\_\_ (“Project”), the Owner and Construction Manager at Risk hereby agree to amend and modify the Agreement by this Amendment and establish a Guaranteed Maximum Price and Contract Time for all the Work as set forth below:

**ARTICLE 1**

**SCOPE OF WORK**

The scope of the Work consists of the construction of a \_\_\_\_\_,

In accordance with the Agreement, 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 & Specifications	_____ through _____	_____
2.	Allowances	_____ through _____	_____
3.	Clarifications & Exclusions	_____ through _____	_____
4.	Completion Schedule	_____ through _____	_____
5.	Schedule of Values	_____ through _____	_____
6.	List of Itemized General Conditions	_____ through _____	_____
7.	List of Subcontractors & Major Suppliers	_____ through _____	_____

## **ARTICLE 2**

### **GUARANTEED MAXIMUM PRICE**

2.1 Construction Manager at Risk Guaranteed Maximum Price (GMP) for the Work, including the estimated Cost of the Work as defined in Section 5 of the Agreement and Construction Manager at Risk Fee as defined in Section 4 of the Agreement, 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 at Risk will include in the total amount of GMP under this Agreement 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 reconciliation will be prepared for the Owner's review and approval.

2.3 The Construction Manager at Risk Fee for the entire Work anticipated on this Project is hereby established as a lump sum amount of \_\_\_\_\_ (\$ \_\_\_\_\_), said lump sum amount is included within the above noted GMP.

2.4 The General conditions expenses for the entire Work anticipated on this Project are hereby established as a lump sum amount of \_\_\_\_\_ (\$ \_\_\_\_\_), said lump sum amount is included within the above noted GMP. The items included as General Conditions expenses are listed in the List of Itemized General Conditions attached hereto and incorporated herein as Attachment No. \_\_\_\_\_. Except as said lump sum amount for General Conditions expenses may be expressly adjusted by Change Order or Construction Change Directive, Construction Manager at Risk acknowledges and agrees that Owner shall have no liability for any General Conditions expenses beyond payment of the above noted lump sum amount and Construction Manager at Risk agrees that it shall not be entitled to receive any additional compensation from Owner for the General Conditions beyond the above lump sum amount.

2.5 Monthly installment payment of the Construction Manager at Risk Fee and the General Condition expenses shall be based upon the percent completion of the designated portion of the Work for each particular month.

2.6 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 lump sum General conditions expense amount noted in paragraph 2.4 above, the parties have agreed to establish a contingency within the GMP in an amount not-to-exceed amount \_\_\_\_\_ (\$ \_\_\_\_\_). 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. Construction Manager at Risk shall not proceed with any portion of the Work which it intends to charge against this contingency without first obtaining Owner's express written authorization to proceed. The Construction Manager at Risk 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 a part of Construction Manager at Risk basic Work compensated within the GMP and not chargeable against the Owner's Contingency Allowance. Further, any contingency expenditures become part of the Contract Documents and are incorporated by reference herein. Unused contingency remaining at the end of the job will be credited from the GMP. Construction Manager at Risk has no entitlement to any portion of any unused contingency. It is acknowledged that this is not a "line item" GMP. It is an overall fixed price GMP. Buyout savings are for the sole use of the construction manager.

2.7 The parties have agreed to establish an allowance within the GMP for \_\_\_\_\_ in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_). Construction Manager at Risk 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 \_\_\_\_\_.

2.8 Pursuant to Exhibit A, Paragraph 12.4 of the Agreement, if, at the time final payment is made to Construction Manager at Risk, the total Cost of the Work has been increased by approved Change Orders in an amount causing the original GMP as set forth in this Amendment to be exceeded by more than \_\_\_\_\_ (\$ \_\_\_\_\_), then Construction Manager at Risk shall be entitled to an increase in the Construction Manager at Risk Fee in the amount of \_\_\_\_\_ (%) of the amount exceeding the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) plus that original GMP amount.

2.9 Construction Manager at Risk recognizes that this Contract includes work for trench excavation in excess of five feet deep. Construction Manager at Risk acknowledges the requirements set forth in Section 553.63 of the Florida Statutes titled Trench Safety Act. Construction Manager at Risk certifies that the required trench safety standards will be in effect during the period of construction of the Project and Construction Manager at Risk agrees to comply with all such required trench safety standards.

2.9.1 The amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) has been separately identified for the cost of compliance with the required trench safety standards; said amount is included within the GMP.

2.10 Construction Manager at Risk 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 at Risk.

### **ARTICLE 3**

#### **CONTRACT TIME**

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 \_\_\_\_\_ (\_\_\_\_\_) days ("Contract Time") THE SUBSTANTIAL COMPLETION DATE IS THEREFORE ESTABLISHED AS \_\_\_\_\_.

3.2 Pursuant to this Agreement, the parties have established a liquidated damage rate for reasons stated therein, which the parties acknowledge and agree apply to this Amendment and Construction Manager at Risk responsibility to complete the Work within the Contract Time as stated herein. Accordingly, the liquidated damage rate established in this Agreement shall be assessed from Construction Manager at Risk for each calendar day Construction Manager at Risk fails to achieve Substantial Completion for the Designated Work within the Contract Time.

### **ARTICLE 4**

#### **MISCELLANEOUS**

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

OWNER

Construction Manager at Risk

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

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

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

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

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

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

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

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



## **EXHIBIT J**

### **TRUTH-IN-NEGOTIATION CERTIFICATE**

In compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, «**Company**» hereby certifies that wage rates and other factual unit costs supporting the compensation for the construction manager at risk services of CONSTRUCTION MANAGER AT RISK to be provided under this Agreement, concerning «**Project**» are accurate, complete and current as of the time of contracting. Further, the original contract amount and any additions thereto shall be adjusted to exclude any significant sums where the Owner determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Such adjustments must be made within one (1) year following the end of the contract.

#### **CONSTRUCTION MANAGER AT RISK:**

«COMPANY»

By:

Print Name: «Signatory»

Title: «Sigtitle»

Date:

## EXHIBIT K - CERTIFICATE OF INSURANCE FORM

Client#: 706436

CREATCONTR1

**ACORD™****CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)  
8/27/2021

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. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>Marsh &amp; McLennan Agency, LLC</b> <b>Bouchard Region</b> <b>101 N. Starcrest Drive</b> <b>Clearwater, FL 33765</b>		<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext): 727 447-6481</b> <b>FAX (A/C, No): 727 449-1267</b> <b>E-MAIL ADDRESS: certificates@bouchardinsurance.com</b>															
<b>INSURED</b> <b>Creative Contractors, Inc.</b> <b>620 Drew Street</b> <b>Clearwater, FL 33755-4108</b>		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : National Union Fire Ins Co of Pittsburgh</td> <td>19445</td> </tr> <tr> <td>INSURER B : Travelers Property Casualty Co. of Amer</td> <td>25674</td> </tr> <tr> <td>INSURER C : New Hampshire Insurance Company</td> <td>23841</td> </tr> <tr> <td>INSURER D : The Continental Insurance Company</td> <td>35289</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : National Union Fire Ins Co of Pittsburgh	19445	INSURER B : Travelers Property Casualty Co. of Amer	25674	INSURER C : New Hampshire Insurance Company	23841	INSURER D : The Continental Insurance Company	35289	INSURER E :		INSURER F :	
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INSURER F :																	

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

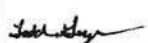
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	Y	Y	GL9925699	09/01/2021	09/01/2022	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$ \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	Y	Y	CA4607342	09/01/2021	09/01/2022	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000 <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE	Y	Y	CUP4S93115221NF	09/01/2021	09/01/2022	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC039326891	09/01/2021	09/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
B	Leased/Rented Eq.			QT6600N694763TIL21	09/01/2021	09/01/2022	\$100,000 Deduct \$1,000
D	Excess Liability			FFX6079170915	09/01/2021	09/01/2022	\$15,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

If required by written contract, Certificate Holder is an additional insured with respect to General Liability, Auto Liability, and Umbrella Liability, subject to the terms, conditions and exclusions of the policies. Additional insured with respect to General Liability includes ongoing and completed operations. Coverage with respect to General Liability is primary and noncontributory.

(See Attached Descriptions)

<b>CERTIFICATE HOLDER</b> <b>CREATIVE CONTRACTORS INC</b> <b>620 DREW STREET</b> <b>CLEARWATER, FL 33755-0000</b>	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  <b>AUTHORIZED REPRESENTATIVE</b> 
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 #S8627148/M8627070

RCAXP

**EXHIBIT L**  
**CONSTRUCTION MANAGER AT RISK PRE-CONSTRUCTION PHASE FEE**  
**PROPOSAL**

Conceptual Budgeting: \$5,000.00

Schematic Estimate / Preconstruction Services: \$7,500.00

Design Development Estimate / Preconstruction Services: \$10,000.00

Construction Documents / GMP Estimating/ Preconstruction Services: \$22,500.00

**Total Cost: \$45,000.00**